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SUPREME COURT OF THE UNITED STATES.

No. 854.

CHARLES KERN, EMIL DIETZSCH, THE BANK OF NORTH AMERICA, JOHN McCAFFREY, WILLIAM J. HYNES, AND EDWIN WALKER, APPELLANTS,

vs.

FREDERICK W. HUIDEKOPER, THOMAS W. SHANNON, AND JOHN N. DENNISON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED SEPTEMBER 10, 1880.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court rooms in the city of Chicago, in the district aforesaid, before the judges thereof, on Thursday, the tenth day of June, in the year of our Lord one thousand eight hundred and eighty, and of our Independence the one hundred and fourth.

WILLIAM H. BRADLEY, *Clerk.*

FREDERIC W. HUIDEKOPER ET AL.
v.
CHARLES KERN ET AL. } In chancery.

NORTHERN DISTRICT OF ILLINOIS, *set:*

Be it remembered, that on the 10th day of June, A. D. 1878, came the said complainants by Messrs. Crawford and McConnell, their attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in the district aforesaid, their bond for costs and bill of complaint in said entitled cause, which said bond for costs and bill of complaint are respec-
2 tively in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, July term, A. D. 1878.

FREDERIC W. HUIDEKOPER AND OTHERS
vs.
CHARLES KERN AND EMIL DIETZCH. } In chancery.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by them, I hereby agree and stipulate that execution may issue against my property for any costs taxed against them. Dated this 10th day of June, A. D. 1878.

HENRY CRAWFORD.

(Endorsed:) Filed June 10th, A. D. 1878. Wm. H. Bradley, clerk.

Bill of complaint.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

3 In the circuit court of the United States for the northern district of Illinois, in chancery sitting.

Your orators, Frederic W. Huidekoper, a citizen of the State of Pennsylvania, Thomas W. Shannon, a citizen of the State of New York, and John M. Denison, a citizen of the State of Maryland, exhibit this bill of complaint against Charles Kern and Emil Dietzsch, citizens of the State of Illinois, and show to the court that heretofore, to wit, on the 23d day of May, 1877, your orators instituted an action of replevin in the circuit court of Cook County, State of Illinois, against Charles Kern, claiming property and right of possession of about one thou-

sand tons of old railroad iron of the value of $18,000, and that the said Kern had unlawfully taken and detained the said property from your orators.

Your orators caused the proper affidavit as required by the laws and practice of the State of Illinois to be filed in said State court cause, and a writ of replevin to be therein issued, which was directed to the defendant herein, Emil Dietzsch, who was then the coroner of said county of Cook, commanding him to take the said property and deliver it into the custody of your orators. As also required by the law of the State of Illinois in that behalf, your orators executed and delivered to the said Dietzsch a replevin bond, with Arthur B. Meeker, and
4 John B. Drake, of Illinois, as their sureties, and thereupon the said defendant Dietzsch took the said property from the custody of said Kern and delivered the same unto your orators, and made due return of such replevin writ, and also returned said original bond to the files of said circuit court of Cook County.

Thereafter your orators, to wit, on the 6th day of July, 1877, in pursuance of acts of Congress in that behalf, filed their petition to remove the said cause into this court and tendered good and sufficient bond for the filing of the record in this cause on or before the first term of the next ensuing session of this court, and to do all other acts required by the said act of Congress to entitle your orators to transfer said cause in this court.

And thereafter, on the 27th day of July, 1877, and in due accordance with law, your orators filed a transcript of the record in said cause originally instituted in said State court in the clerk's office of this court.

And thereafter, on the 14th day of November, 1877, this court entered a formal order approving the filing of said cause on said 27th day of July, 1877; and thereafter, by the order of this court, entered in the said replevin cause on the 5th day of June, 1878, this court de-
5 clared that said replevin action had been removed from the said State court of Cook County, and had been depending in this court since the said 27th day of July, 1878, and that this court, by reason of such removal, had exclusive jurisdiction thereof since that time, and further ordered the said replevin action to be placed upon the trial docket of this court for final trial and disposition.

Your orators show that the said replevin action, so removed into this court, has been and still is depending on the law side of this court since said 27th day of July, 1877, and that since said time this court has had sole, exclusive, and paramount jurisdiction over said controversy, and the same is still depending and undecided in this court. All of which matters will fully appear by reference to the records and files of this court.

Notwithstanding the premises, your orators show that on the 6th day of June, 1878, the said Charles Kern, having full notice that said cause has been removed into this court, and of the several orders of this court in the premises, taking exclusive jurisdiction in said replevin cause, caused a judgment to be entered up in the said circuit court of Cook County in favor of said Kern and against your orators, pretending to adjudge and order the return of the identical property embraced
6 in the said suit now pending in this court; but your orators charge that the said pretended judgment is utterly null and void, being entered up in a court having no jurisdiction whatever over the said parties, or the subject-matter of said controversy, and that the same ought not to be allowed to be made use of to vex or harass your

orators or their sureties, but ought to be cancelled and declared to be of no effect, as fraudulent and void.

Your orators show that the said Charles Kern does now give out and pretend that he will rely upon the said void and illegal judgment for the return of the property as an adjudication of his title to said rails, and for the purpose of enforcing the same he has instituted in the said circuit court of Cook County an action upon the replevin bond given by your orators, suing therein in the name of his co-defendant Emil Dietzch, have ordered process thereon, and will still further continue to harass your orators or their sureties on said bond, unless restrained by order of this court.

All of which is contrary to equity and good conscience, and will tend to a multiplicity of suits, and cause great annoyance and expense to your orators, which ought not to be permitted by this court, having exclusive jurisdiction over said undetermined replevin action, and
7 the sole lawful authority over said replevin bond, which is a mere incident to such pending cause.

Your orators there*after* pray that the court shall forthwith enter an order enjoining the said defendants and their attorneys and agents of every kind, and the execution creditors represented by them, from in any manner whatever instituting or prosecuting any suit upon the said replevin bond against your orators, or against the sureties thereto or either or any of them, or in any manner whatever taking any action to enforce any liability or right upon said pretended judgment of return entered in said circuit court of Cook County, or upon the said replevin bond, and upon the final hearing your orators pray that such injunction shall be made perpetual, and that the said defendant be duly summoned to answer the premises, but without oath (an oath being hereby wa'ved under the rules).

Your orators pray for all such other and further relief as to the court may seem proper and is necessary to adequately protect their rights and the jurisdiction of this court in the premises.

F. W. HUIDEKOPER,
THOMAS W. SHANNON,
JOHN M. DENISON,
Complainants.

HENRY CRAWFORD,
Solicitor.

8 STATE OF ILLINOIS.
Cook County, ss:

Henry Crawford, on oath, says that he is the solicitor of the complainants in the above bill of complaint; that the said complainants are now absent from this State, and that he has read the foregoing instrument, and is cognizant, of his own knowledge, that the facts therein stated are true in substance and fact.

HENRY CRAWFORD.

Subscribed and sworn to before me this 8th day of June, A. D. 1878
[SEAL.] GEO. MILLS ROGERS,
Notary Public.

(Endorsed: Filed June 10, 1878. Wm. H. Bradley, cl'k.

And on the same day, to wit, the 10th day of June, A. D. 1878, a writ of subpœna issued out of said clerk's office in said entitled cause, which

said writ, with the return of the mashal endorsed thereon, is in the words and figures following, to wit:

Writ of subpœna.

UNITED STATES OF AMERICA,
Northern district of Illinois:

9 The United States of America to Charles Kern and Emil Dietzsch, greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of July next, to answer the bill of complaint of Frederick W. Huidekoper this day filed in the clerk's office of said court in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 10th day of June, in the year of our Lord one thousand eight hundred and seventy-eight, and of our Independence the 102d.

[SEAL.] WM. H. BRADLEY, *Clerk.*

MEMORANDUM.—The above named defendants are notified that unless they and each of them shall enter their appearance in the clerk's
10 office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainants' bill will be taken against them as confessed, and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

I have served the within writ within my district in the following manner, to wit, upon Charles Kern, therein named, on the 10 day of June, A. D. 1878; also upon Emil Dietzsch, therein named, on the 11 day of June, A. D. 1878, by personally delivering to each of them a true copy of the same on the aforesaid days.

J. S. HILDRUP,
U. S. Marshal,
By D. D. SABIN,
Deputy.

(Endorsed:) Filed June 15th, A. D. 1878.
WM. H. BRADLEY, *Clerk.*

Afterwards, to wit, on the 1st day of July, A. D. 1878, in the record of the proceedings of said court in said entitled cause, before the honorable John M. Harlan, one of the justices of the Supreme Court of the United States, and the honorable Henry W. Blodgett, district judge, is the following entry, to wit:

FREDERIC W. HUIDEKOPER ET AL.
v.
CHARLES KERN ET AL. } In chancery.

11 Now come the parties, by their solicitors, and the complainants,

by their solicitor, move the court for an injunction against defendants as prayed for in the bill of complaint herein.

Afterwards, to wit, on the 3rd day of July, A. D. 1878, in the record of the proceedings of said court in said entitled cause, before the Hon. John M. Harlan, one of the justices of the Supreme Court of the United States, and the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

FREDERICK W. HUIDEKOPER ET AL.
v.
CHARLES KERN ET. AL. } In chancery.

The motion of the complainants for a preliminary injunction, in accordance with the prayer of the bill, came on to be heard, and was
12 argued by Mr. Crawford for complainants and by Mr. Walker for the defendants, and on consideration it is ordered by the court that a temporary injunction do issue as prayed for in the bill, and that, until the further order of this court in the premises, the defendants and each of them, and all and every of their agents, servants, and attorneys be, and they are hereby, restrained and enjoined from in any manner instituting or prosecuting in any court or courts any and all suits or actions upon the replevin bond in the bill of complaint mentioned and are still further specially enjoined and prohibited from taking any orders, rules, defaults, or judgments in the certain action brought by the said defendant Dietzsch for the use of the defendant Kern in the circuit court of Cook County, and which action is now depending in said last named court as described in the bill of complaint.

Afterwards, to wit, on the 5th day of July, A. D. 1878, a writ of injunction issued out of said clerk's office against said defendants in said entitled cause, which said writ, with the return thereto thereon endorsed, is in the words and figures following, to wit:

Writ of injunction.

Circuit court of the United States of America, northern district of Illinois, ss:

The United States of America to Charles Kern and Emil Dietzsch
13 and to your counselors, attorneys, solicitors, trustees, and agents, and to each and every of them, greeting:

Whereas it has been represented to the judges of our circuit court of the United States for the northern district of Illinois, in chancery sitting, on the part of Frederick W. Huidekoper, Thomas W. Shannon, and John M. Denison, complainants, in their certain bill of complaint exhibited in our said circuit court, on the chancery side thereof, before the judges of said court against you, the said Charles Kern and Emil Dietzsch, to be relieved touching the matters complained of; in which said bill it is stated among other things that you are combining and confederating with others to injure the complainant touching the matters set forth in the said bill, and that your actings and doings in the premises are contrary to equity and good conscience. And it being ordered that a writ of injunction issue out of said court upon said bill, enjoining and restraining you and each of you as prayed for in said bill, we, therefore, in consideration thereof and of the particular matters in

said bill set forth, do strictly command you, the said Charles Kern and Emil Dietzsch, your counselors, attorneys, solicitors, trustees, and agents, judgment and execution creditors, and each and every of you, that you do absolutely desist and refrain from in any manner whatever in-
14 stituting or prosecuting any suit upon the replevin bond mentioned and referred to in said bill against said complainants or against the sureties on said bond, or in any manner whatever taking any action to enforce any liability or right upon said pretended judgment of return entered in the circuit court of Cook County, in the State of Illinois, or upon the said replevin bond, and from taking any orders, rules, defaults, or judgment in a certain action brought by the said defendant Emil Dietzsch for the use of said defendant Charles Kern and now pending in the said circuit court of Cook County and State of Illinois, more particularly described and set forth in said bill.

And we do also strictly command you, the said Charles Kern and Emil Dietzsch, that you do absolutely desist and refrain from making any assignment of your property and from confessing any judgment for the purpose of giving preference to any other creditors over the said complainant, and from doing any other act to enable other creditors to obtain your property until this honorable court in chancery sitting shall make other order to the contrary.

Hereof fail not under the penalty of what the law directs.

To the marshal of the northern district of Illinois to execute and return in due form of law.

15 Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago, in said district, this fifth day of July, in the year of our Lord one thousand eight hundred and seventy eight, and of our Independence the one hundred and third year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court of the United States, northern district of Illinois.

STATE OF ILLINOIS,
County of Cook, ss:

Henry Meiselbar on oath says that in pursuance of directions of H. Crawford, esq., given to him, he served a full and true copy of the within described writ of injunction personally upon Emil Dietzsch and at the request of said Dietzsch delivered the same to Mr. Gustav A. Kern, his agent, and affiant further says that he also left a similar copy with John Garrick, who is the chief deputy of Charles Kern, the defendant herein, on the 13th day of July, A. D. 1878, in the forenoon of said day.

H. MEISELBAR.

16 Subscribed and sworn to before me this twelfth day of May, A. D. 1879.

[SEAL.] PERRY H. SMITH, JR.,
Notary Public.

(Endorsed:) Filed May 13, A. D. 1879. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 5th day of October, A. D. 1878, said defendant Charles Kern, by his solicitors, filed in said clerk's office his answer in said entitled cause, which said answer is in the words and figures following, to wit:

Answer of Charles Kern.

Circuit court of the United States, northern district of Illinois.

F. W. HUIDEKOPER, THOMAS W. SHANNON, and JOHN M. DENNISON, complainants,
v.
CHARLES KERN AND EMIL DIETZSCH, DEFENDANTS. } In chancery. Bill.

The several answer of Charles Kern, one of the defendants to the bill of complaint of F. W. Huidekoper, Thomas W. Shannon, and John M. Dennison, complainants.

This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to
17 the many errors and insufficiencies in the complainants' said bill of complaint contained, for answer thereunto, or so much thereof as this defendant is advised is material for him to make answer unto, answers and says that this defendant admits that the plaintiffs on or about the 23d day of May, A. D. 1877, brought their certain action of replevin in the circuit court of Cook County, State of Illinois, against this defendant, claiming property and right of possession of about one thousand tons of old railroad iron of the value of eighteen thousand dollars, also claiming that this defendant had unlawfully taken possession of and detained the same from the plaintiffs and caused a writ of replevin to be issued in said action, and also a summons returnable at the first day of the next ensuing term of the said court, to wit: on the third Monday of June, A. D. 1877, directed to the said Emil Dietzsch, coroner of said county of Cook, commanding him to execute the same upon this defendant.

The defendant further admits that on the 24th day of May, A. D. 1877, the said plaintiffs, together with Arthur B. Meeker and John B. Drake, the two last named persons being then and now residents and citizens of the State of Illinois, executed and delivered to the said Dietzsch,
18 as such, their certain bond, as by the statute in such case required, covenanting, among other things, that the said plaintiffs should prosecute their said action with effect and without delay and make return of the said property to this defendant, if return thereof should be awarded, and would save and keep harmless the said coroner in replevying said property, whereupon the said coroner, as by the law required, seized said property and delivered the same to the plaintiffs and made due return of said writ and summons to said circuit court.

And, for further answer, the said defendant shows unto your honors that prior to the filing of the declaration in said action of replevin, and before the return day of said summons, to wit: upon the 31st day of May, A. D. 1877, the said plaintiffs filed in said circuit court and in said action their certain petition and bond for removal of said cause to this court under the act of Congress then in force and operation.

That on the second day of June, A. D. 1877, the said plaintiffs, upon proper notice, called up said petition and moved the said circuit court for an order removing said cause to this court, which said motion the said circuit court refused, and denied said petition.

That on the thirtieth day of June, A. D. 1877, the said plaintiffs
19 again appeared in said circuit court and filed their declaration in said action of replevin, and on said day again called up their said petition and motion for removal of said cause to this court, which said motion and petition the said circuit court again denied.

That on the 6th day of July, then next, this defendant filed his certain plea in said action of replevin, whereupon the said plaintiffs dismissed their said petition and caused an order to that effect to be entered in said cause. That immediately thereafter the said plaintiffs refiled their said petition and bond, and thereupon again moved the court for all order of removal of said cause to this court, which said motion the said circuit court, after argument by counsel of the respective parties, overruled, all of which said several matters this defendant is ready to verify by the record.

And for further answer to the plaintiffs' bill of complaint the said defendant respectfully shows unto your honors that prior to the time when the said plaintiffs brought their said action of replevin in said circuit court, to wit, on the 8th day of March, 1877, the Bank of North America sued out of the superior court of the county of Cook aforesaid a certain writ of fieri facias of that date against the Chicago, Danville and
20 Vincennes Railroad Company directed to the sheriff of said Cook County, by which said writ the people of the State of Illinois commanded the said sheriff that of the goods and chattels of the said railroad company in his county he should cause to be made the sum of eighty four hundred and fourteen and $\frac{97}{100}$ dollars damages, and the sum of dollars costs, which, by the consideration of the said superior court, the said Bank of North America had, prior to said last named day recovered against the said Chicago, Danville and Vincennes Railroad Company.

And that, also, one John McCaffery on said 8th day of May, 1877, sued out of said superior court a certain other writ of fieri facias of that date against the said railroad company, by which said writ the people of the said State of Illinois commanded the said sheriff of the said county of Cook that out of the goods and chattels, lands, and tenements in his said county he should make the further sum of thirty-three hundred and thirty-three dollars and forty-one hundredths dollars damages, and costs taxed at dollars, which, by the consideration of the said superior court at its May term, 1877, the said John McCaffrey had recovered against the said railroad company, which said writs were thereupon, on the said days of the dates thereof delivered to this defendant, who then
21 was, thenceforth, and still is the sheriff of the said county of Cook, by virtue of which said writs the said defendant, as such sheriff, before the return day thereof, to wit, on the 9th and 10th days of May, A. D. 1877 (the said writs then being in full force and unsatisfied), then took the said goods and chattels mentioned in the said complainants' bill of complaint, and detained the same in execution of said writs, which are the same taking and detention in said bill of complaint mentioned.

And the said defendant charges the fact to be that at the time of the commencement of said action of replevin and the service upon him of said writ and the seizure of said property, he had no possession of or control over the same except as sheriff of said county in the execution of said writs of fieri facias and as commanded therein, and that his custody of the said property by virtue of the levy and execution of said writs was in law the custody and possession of the superior court of Cook County aforesaid.

The said defendant admits that the said plaintiff did on the 27th day of July, A. D. 1877, file a transcript of said cause then pending in the said circuit court in the office of the clerk of this court.

22 And the said defendant says it is true as charged in said plaintiffs' bill of complaint that this honorable court in said replevin cause, on the sixth day of June, A. D. 1878, entered an order adjudging

that said replevin cause had been properly and fully removed from said State court, and was and had been depending in this court from said twenty-seventh day of July, A. D. 1877, and that this court had exclusive jurisdiction since the said 27th day of July, A. D. 1877.

And defendant charges that the said order was so entered upon an ex parte hearing at which neither this defendant nor his council was present and upon an imperfect and incomplete transcript of said cause in said State court.

The said defendant further answering says it is not true as charged in said bill of complaint that this court since said 27th day of July, 1877, has had the sole, exclusive, and paramount jurisdiction over this controversy; but, on the contrary, the said defendant states the fact to be and so charges that the said State court upon the motion of the said plaintiffs held that the federal court had neither original nor appellate jurisdiction of the subject matter of this action; that the said cause was not removable under the acts of Congress, and therefore declined to yield
23 jurisdiction of said action, and denied the petition of the plaintiffs.

The said defendant further shows that on the 28th day of May, A. D. 1878, the said plaintiffs, by their attorney, appeared in said cause in said State court and moved the court for a stay of proceedings in said cause, which motion of the plaintiffs after argument of counsel of the respective parties the said State court overruled. Again on the first day of June, A. D. 1878, the said plaintiffs by their attorney appeared in the said cause in said State court and filed a replication to said defendant's plea in said cause.

Again on the said first day of June, A. D. 1878, the said plaintiffs filed in said cause in said State court their certain other petition for removal of the said cause to the circuit court of the United States for the northern district of Illinois. That said petition was entitled in said cause as then pending in said circuit court of Cook County, and recited among other things that no trial had as yet been had in said cause and that no trial could have been had thereof before the present term of this court because said cause was only this day put at issue, which said petition was verified by one of the plaintiffs, the said Frederick W.
24 Huidekoper. Accompanying said petition, the said plaintiffs filed in said cause in said State court their certain bond as required by the acts of Congress, executed by the said Huidekoper in his own proper person and by his co-plaintiffs, Shannon and Dennison, by attorney, and reciting therein among other things that said cause was then pending in the circuit court of Cook County. To this petition the said defendant by his counsel filed his objections in writing principally, that said petition was not filed in apt time; that at least ten terms of said State court had intervened after the commencement of said action and before the filing of said petition at which said action could have been tried. After argument and due consideration the court overruled said motion, and the plaintiffs by their counsel in open court reserved their exceptions to said ruling.

And the said defendant further answering respectfully shows unto your honors that it is further shown by the record of said cause in said State court that on the third day of June, A. D. 1878, the issues of said cause being joined in said State court, both parties thereto being present by their respective counsel, said cause was called for trial and a jury was empanelled and sworn in accordance with the law and the practice of said court.

25 That said trial continued during the third, fourth, fifth, and sixth days of June, A. D. 1878, each of said parties introducing

evidence and examining witnesses in support of their declaration and pleas respectively, and each party announcing to the court that they had no more evidence to offer in support of the issues.

The said defendant, further answering, admits that on the said sixth day of June, A. D. 1878, his counsel had knowledge of the orders then entered by this court, but the defendant states that he was advised by his counsel, and charges, upon information and belief, the fact to be that this court had not then, by any order entered in said cause, taken exclusive jurisdiction of the same, and further states, upon like information and belief, that at that date this court had given this defendant no opportunity of being heard by counsel upon the question of jurisdiction, nor had such question been presented to this court in any manner in accordance with the rules of practice of this court.

The said defendant further denies that, on the sixth day of June, A. D. 1878, he wrongfully caused a judgment to be entered in the said State court in his favor, and against the said plaintiffs for the return of the property in controversy; but, on the contrary, the said defend-
26 ant charges the fact to be that after all the evidence upon said trial had been submitted to the jury as hereinbefore charged, and after the said defendants' counsel had submitted his argument to the court and jury, the said defendants, by their counsel, in open court, dismissed their said cause, whereupon the said circuit court, as required by the statute authorizing and regulating actions of replevin, entered a judgment in favor of the said defendant for his costs, and for the return of the property replevied by the said plaintiffs from the said defendants, which said judgment still stands in said State court unsatisfied, and from which the said plaintiffs have prosecuted no appeal to any court of appellate jurisdiction over the judgment of said State court.

And the said defendant, further answering, says that it is not true as charged in said plaintiffs' bill of complaint that the said State court had no jurisdiction of said cause of action and of the parties thereto; but, on the contrary, the said defendant charges that said State court had exclusive original jurisdiction over said replevin action; that the said plaintiffs first invoked such jurisdiction, and continued to recognize and accept such jurisdiction until the dismissal of their said action in such State court, on the sixth day of June, A. D. 1878.

27 And the said defendant, further answering, respectfully submits to your honors that the right of removal of causes from the State to Federal courts, provided by the several acts of Congress, is entirely a personal right that may be waived by the party either before or after the filing of the petition for the removal, and the said defendant shows that the said plaintiffs by their voluntary appearance in said cause in said State court, after the filing of their said petition, upon the 31st day of May, A. D. 1877, and the prosecution of their said action in said State court to final judgment as hereinbefore shown, waived their right of removal, if any such right existed under their said petition, and that said plaintiffs are legally and in good faith bound to observe and respect the judgment of said State court, especially as such judgment was rendered in a cause prosecuted in said court by and in the sole interest of the said plaintiffs.

And the said defendant, further answering, admits that an action has been brought and is now pending in the said circuit court of Cook County by his co-defendant, Emil Dietzsch, as coroner of said county of Cook against the said plaintiffs and one John B. Drake upon the replevin bond; but the said defendant denies that said action has been
28 brought by his direction and denies that such action is controlled

by him and especially denies that he has any personal interest whatever in said action so brought upon said replevin bond.

The said defendant says that he is advised by counsel and charges the fact to be that in his defence of said action in said State court so prosecuted against him as sheriff of said county of Cook by the said plaintiffs, he has not exceeded his legal rights or duty; that the real parties in interest in said replevin action and in the suit upon said bond are the said bank of North America and the said John McCaffrey, execution plaintiffs, as hereinbefore shown, and that said last named parties in fact have controlled, and do now control the said litigation in said State court; and that the said defendant is but a mere nominal party and has no power to control the same.

And the said defendant, further answering, respectfully shows unto your honors that at the time of receiving said writs of execution he was and from thence hitherto, has been and still is the sheriff of the said county of Cook, duly commissioned and qualified, and as such was an officer of, and subject to the orders of, said superior court. That, by the express terms of said writ, he was commanded by said court that of the lands and tenements, goods, and chattels of said Chicago, Dan-
29 ville and Vincennes Railroad Company, he should cause to be made the sums of money named in said writs, respectively.

That, after receiving said writs upon demand made of said execution defendant, the said company did designate and turn out to him as subject to levy the said personal property described in said plaintiff's bill of complaint, whereupon it became the duty of this defendant as an officer of and under the orders of said superior court to seize said property and hold the same for the purpose of satisfying said writs of execution.

And the said defendant avers that he did so seize said property by the order and direction of said State court and as such officer, and in the execution of said process, was in possession of the same at the time of service of said writ of replevin.

And the said defendant respectfully submits unto your honors that such possession by him was in fact and in law the possession of said State court; that said court did not relinquish the actual possession of said property until the execution of said writ of replevin, and that then the said bond was delivered to the said coroner and returned by him to the said State court under the statutes of said State authorizing and regulating actions of replevin, was substituted for the possession
30 of the property so replevied, and took the place thereof. That the said State court having the sole original jurisdiction of the res in controversy, and of the action of replevin brought for the possession thereof, and having refused upon the application of the plaintiffs to transfer the jurisdiction of said res and controversy to this court, still held the said defendant as an officer of said State court to the full and faithful discharge of all his duties as such officer, touching the matters in controversy in said court.

And the said defendant further respectfully shows unto your honors, that as such officer he was and is subject to the orders and commands of said State court, and that by law he is required to execute all the commands, writs, and orders of said court, and that a failure to do so would be contempt of said State court, and would also render the said defendant liable for damages to the party aggrieved by such failure, from which penalty this court has no jurisdiction to relieve him or to revoke, modify, or control the orders of said State court.

The said defendant, further answering, respectfully submits to your honors that this court has not the sole lawful authority over said replevin

bond as charged in said plaintiffs' said bill of complaint, that it has no jurisdiction over any action that has been or hereafter may be
31 brought or prosecuted upon said bond, if for no other cause than this: that two of the makers of said bond and parties defendant in said action now pending in said State court, are now and have been since the making of said bond citizens and residents of the State of Illinois.

And the said defendant further respectfully submits to your honors that this court is one of limited jurisdiction, deriving all its power and jurisdiction from the constitution and acts of Congress of the United States; that it has no power to enjoin the defendants and said execution defendants from enforcing and collecting said judgment of said State court, as prayed for in said plaintiffs' bill of complaint, or from prosecuting in said State court any action necessary for the collection of said judgments, or either of them, or from executing any writ issued by said State court for enforcing said judgments, or either of them; and especially does this defendant respectfully submit that the injunction and order prayed for the purpose of preserving the dignity and jurisdiction of this court is wholly unnecessary: that such jurisdiction is fully protected and preserved by the constitution and laws of the United States, to which the defendant will at all times yield proper respect.

And this defendant submits to this honorable court that com-
32 plainants' said bill of complaint is demurrable for want of equity, and that said complainants are not entitled to any relief from a court of equity, and this defendant hopes he shall have the same benefit of this defence as if he had demurred to said complainants' bill.

And this defendant denies all unlawful combination and confederacy in the said bill charged, without this, that any other matter or thing material or necessary for these defendants to make answer unto, and not herein or hereby well or sufficiently answered unto, confessed, or avoided, traversed or denied, is true to the knowledge or belief of these defendants, all which matters and things this defendant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

CHARLES KERN,
Sheriff of Cook Co.

WALKER AND CARTER,
Sol's for Def'ts.

E. WALKER,
Of Counsel.

STATE OF ILLINOIS,
County of Cook, ss:

On this 5th day of October, A. D. 1878, before me personally appeared the above named Charles Kern, and made oath that he
33 has read the above bill subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to those matters which are herein stated to be on his information or belief, and as to those matters he believes it to be true.

[SEAL.] JOHN GARRICK,
Notary Public.

(Endorsed:) Filed Oct. 5, 1878. Wm. H. Bradley, cl'k.

And on the same day, to wit, the 5th day of October, A. D. 1878, said defendant, Emil Dietzsch, filed in said clerk's office his answer in said entitled cause, which said answer is in the words and figures following, to wit:

Answer of Emil Dietzsch.

Circuit court of the United States, northern district of Illinois.

F. W. HUIDEKOPER, THOMAS SHANNON AND John M. Dennison, complainants,
v.
CHARLES KERN AND EMIL DIETZSCH, DEFENDants. } Bill in chancery.

The several answer of Emil Dietzsch, one of the defendants,
34 to the bill of complaint of F. W. Huidekoper, Thomas W. Shannon and John M. Dennison, complainants.

This defendant, now and at all times saving and reserving to himself all manner of benefit of and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much thereof as this defendant is advised is material for him to make answer unto, prays leave of court for the purpose of saving repetition to adopt as part of his separate answer the answer of his co-defendant, Charles Kern, so far as the same may be a defence to the charges made in said bill of complaint against this defendant.

And the said defendant, for his further answer, shows unto your honors that on said 23d day of May, A. D. 1877, he was, and still is, coronor of said county of Cook, duly commissioned and qualified, and admits that he received and executed said writ of replevin, and the summons in said action, as charged in the plaintiff's said bill of complaint. That in the service of said summons and writ, and in all things pertaining thereto, he was an officer of said circuit court of Cook County, executing and obeying the orders of said court, and that he has no personal interest whatever in any of the litigation growing out of said controversy.

35 The said defendant further states that he has been informed, and believes such information to be true that after judgment had been entered in said State court in favor of said defendant therein for the return of said property, an action was commenced in said State court upon the replevin bond delivered to this defendant, and returned by him to said State court, as charged in said defendant, Kern's, answer herein, and that such action is now pending in said State court, but the said defendant says that after the return by him of said bond to said State court, this defendant has had no control over the same or over any matter pertaining thereto, and the said defendant denies that he has caused said action to be commenced, or that he controls the prosecution thereof.

The said defendant, further answering, respectfully submits to your honors, that by the statute under which the said plaintiffs commenced their said action of replevin, and invoked the jurisdiction of the said State court, the custody and possession of said bond was placed under the control of said State court in place and stead of the property so replevied for the ultimate benefit and protection of said execution plaintiffs, the Bank of North America and John McCaffrey; that this defend-

ant has no personal interest therein, and is powerless even under
36 the order of this court, to control in any manner the action now being prosecuted in said State court upon said bond.

And the said defendant, further answering, shows unto your honors that after the entry of said judgment in said action of replevin in said State court and prior to the present date, the clerk of the said court issued under the seal thereof and delivered to this defendant a certain writ of retorno habendo, reciting, among other things, that Charles Kern, defendant (being the said defendants co-defendant herein), was summoned to appear before the said circuit court, to answer the said plaintiffs herein of a certain plea, charging the said Kern with unlawfully taking from the said plaintiffs, certain personal property, to wit, 1,000 tons of old railroad iron (being the same property described in plaintiffs' bill of complaint), and that by certain proceedings had in said circuit court, the right of said property had been adjudged in the said Kern, and a return thereof awarded to him, together with his costs and charges in his said defence expended, by which said writ the people of the State of Illinois commanded this defendant, as an officer of said State court, that he should cause the said goods and chattels to be returned to the said Charles Kern, without delay, to hold to him irre-
pleviable in form aforesaid, and that he make of the goods and
37 chattels, lands and tenements, of the said plaintiffs, the said costs of the said Kern, as aforesaid, and that this defendant make due return of said writ, with an endorsement thereon in what manner he had executed the same, which said writ the said defendant still holds wholly unexecuted.

And the said defendant respectfully submits unto your honors, that as an officer of said State court, he is required by the order of the said court and the statutes of the State of Illinois in such case made and provided, to execute said writ in strict obedience to the commands thereof, from which duty this court has not the lawful power to relieve this defendant by any injunctional or other order made herein, and respectfully denies the jurisdiction of this court over this defendant in the execution of said writ of said State court.

And the said defendant, further answering, states upon information and belief that said action upon said replevin bond was brought in said State court in the sole interest and by the direction of the said execution plaintiffs, the said Bank of North America and John McCaffrey; that this defendant can neither control said parties nor the said State court in
the further consideration of the said action; that the same was
38 not commenced by direction of this defendant, and he expressly disclaims all personal interest therein.

And this defendant submits to this honorable court that complainants' said bill of complaint is demurrable for want of equity, and that said complainants are not entitled to any relief from a court of equity, and this defendant hopes he shall have the same benefit of this defence, as if he had demurred to said complainants' bill.

And this defendant denies all unlawful combination and confederacy in the said bill charged without this that any other matter or thing, material or necessary for these defendants to make answer unto and not herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants, all which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and hereby prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

EMIL DIETZSCH.

STATE OF ILLINOIS,
County of Cook, ss:

On this 3d day of October, A. D. 1878, before me, personally
39 appeared the above named Emil Dietzsch, and made oath that he has read the above answer subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are herein stated to be on his information or belief, and as to those matters he believes it to be true.

EMIL DIETZSCH.

Subscribed and sworn to before me this 3d day of October, A. D. 1878.

[SEAL.] SAMUEL M. BOOTH,
Notary Public.

WALKER AND CARTER,
Solicitors for Def't.
E. WALKER,
Of Counsel.

(Endorsed:) Filed Oct. 5, 1878. Wm. H. Bradley, cl'k.

On the same day, to wit, the 5th day of October, A. D. 1878, in the record of the proceedings of said court in said entitled cause before the Hon. John M. Harlan, one of the justices of the Supreme Court of the United States, is the following entry, to wit:

FREDERICK W. HUIDEKOPER ET AL. / *v.* / CHARLES KERN ET AL. } In chancery.

Come now the parties by their counsel, and the defendants, by
40 leave of court, withdraw their demurrer hereinbefore filed, and now file their several answers to the complainant's bill, and do now move the court upon bill and answer to dissolve the order of temporary injunction heretofore entered in said cause. Thereupon the hearing of said motion is remanded to the circuit judge.

Afterwards, to wit, on the 20th day of October, A. D. 1879, in the record of the proceedings of said court in said entitled cause before the Hon. Thomas Drummond, judge, is the following entry, to wit:

FREDERIC W. HUIDEKOPER ET AL. / *v.* / CHARLES KERN, &C., ET AL. } In chancery.

It appearing that notice has been given to Mr. E. Walker of the application for leave to file a supplemental bill herein, and for an injunction in pursuance of the prayer thereof, it is ordered that the complainants have leave to file their supplemental bill, and that an injunction issue against the defendants therein named in pursuance of the prayer of said supplemental bill.

And on the same day, to wit, the 20th day of October, A. D. 1879,
41 said complainants, by their solicitor, filed in said clerk's office their supplemental bill in said entitled cause, which said supplemental bill is in the words and figures following, to wit:

Supplemental bill.

Circuit court of the United States, northern district of Illinois, ss:

F. W. HUIDEKOPER, THOMAS W. SHANNON, AND John M. Denison, *against* EMIL DIETZSCH AND CHARLES KERN. } In chancery.

The complainants herein, by leave of court first had and obtained, and by way of supplement to their bill of complaint hereinbefore filed, now depending in this court, respectfully show to the court that on the 10 day of June, 1878, the original bill was filed in this court against said Emil Dietzsch and Charles Kern who have duly appeared in this cause and filed their answers, that, after full argument and hearing, upon July 3d, 1878, this court granted an injunction in pursuance of the prayer of the original bill of said complainants against said Dietzsch and Kern, and all their agents and attorneys, restraining and prohibiting them, or any or either of them, from in any manner prosecuting or taking any orders, judgments or defaults in a certain action instituted in the name of said Emil Dietzsch, as coroner of Cook County, for the use of Charles Kern against your complainants, and John B. Drake in the circuit court of Cook County then depending, which said action is fully described and set out in said bill.

42 Complainants further show that said injunction is still in full force and effect, and wholly unreversed, and not modified in any particular.

Complainants further show that since the filing of said original bill herein that the bank of North America and John McCaffrey do give out and pretend that said Kern for whose use said action was instituted in the said circuit court of Cook County, was made such plaintiff simply because he at that time was sheriff of Cook County, Illinois, and had in his hands as such officer certain writs of execution in favor of said Bank of North America, and John McCaffrey, and that for such reason the real interest in said litigation was in the said bank and said McCaffrey, and that by reason thereof they were entitled to make themselves parties plaintiff in the said action pending in the State court, and to control the same, but your complainants charge that said Bank of North America and the said John McCaffrey had originally employed Edwin Walker as their attorney, and to appear for and represent their interests in the said litigation in said State court, and to appear for and represent them in the name of said Kern in this action in this court to resist the motion for an injunction made by your complainants, and therefore the complainants charge that by reason of said Bank of North America and John McCaffrey having voluntarily instituted said

43 action in said circuit court of Cook County, using the name of said sheriff as their representative and for their benefit, and having in reality appeared by their counsel in this court in this action, and made default in the name of the said Charles Kern with full knowledge of all the facts that they are in law and equity in privity with the said Charles Kern, and are concluded by the order and decree of this court, prohibiting the said Charles Kern and Emil Dietzsch from taking any order, default or judgment in the action instituted in the State court.

Complainants further distinctly charge that the said Bank of North America and John McCaffrey had actual personal knowledge of the ex-

istence of this litigation, and of the injunction granted by this court on the 3rd day of July, 1878, and that ever since it hath been in full force.

Complainants further charge that since the institution of this action that the said bank of North America has practically ceased to have any interest whatever in any of the said litigation, and that the alleged judgment recovered in its name against the Chicago, Danville and Vincennes Railroad Company, which constitutes its sole interest in the subject matter of this controversy, has recently become, as the complainants are advised and believe and so charge, the personal property of Edwin Walker, who alone has authority to control the same.

44 Complainants charge that the said Edwin Walker and the Bank of North America and John McCaffrey, well knowing the premises and the existence of the injunction of this court, but conspiring together how to defraud the complainants and defeat and disobey the orders of this court, on or about October 1, 1879, procured William J. Hynes to file in the circuit court of Cook County, in the said action of Emil Dietzsch, &c., against John B. Drake, a certain petition, a copy of which is hereto annexed, marked Exhibit A, and which said petition your orators are advised was framed under the direction of said Edwin Walker praying that the said Bank of North America and John McCaffrey might be substituted as parties plaintiff in this action depending in the said State court in the lieu of said Kern; that the said Hynes, as further thereto directed by the said Walker or the Bank of North America or John McCaffrey, caused notice to be served on the said John B. Drake, who hath no interest in said controversy other than as the surety of your orators, that on October 1, 1879, a motion would be made in the said State court to substitute the said Bank of North America and John McCaffrey in the place of Charles Kern, and for a rule on the said John B. Drake to then plead to the said action; and thereafter, on October 1, 1879, the said Walker and the said Hynes appeared

45 in the State court, and, notwithstanding the injunction of this court, procured an order to be entered in the State court substituting the names of the said Bank of North America and John McCaffrey in lieu of the said Charles Kern, and have filed an amended declaration in the said action, a copy of which is hereto annexed, marked Exhibit B, and they thereupon asked for and procured an order to be entered in said cause requiring the said John B. Drake, your orators' surety, to plead to the said amended declaration within twenty days after the filing thereof, which time has not yet elapsed.

Your orators charge that these several acts are each and every of them in plain violation of the injunction and orders of this court in this cause, which were then and there well known to the parties engaged therein, including the said Hynes, and were all merely contrivances instigated and carried through by said Walker for the purpose, if possible, to defeat the jurisdiction of this court and evading its orders, he and his confederates claiming, as your orators are advised, that because the said Bank of North America and John McCaffrey, the judgment creditors represented by said Kern, were not actually parties to this suit, that they are not in any manner bound by the injuction herein rendered.

46 Your orators charge that unless specifically restrained by the mandate and order of this court the said Walker, Hynes, Bank of North America, and John McCaffrey will proceed with prosecution of said action in said State court upon said amended declaration as aforesaid, and will continue to har'ass the surety of your orators, and put

your orators and their surety to large expense and trouble in appearing in said State court and litigating said controversy therein, and that they do intend, unless prohibited by this court, to proceed with said action and procure, if practicable, a judgment against said Drake, your orators' surety, notwithstanding the previous injunction and decree of this court in the premises, all of which matters your orators charge are contrary to equity and good conscience, and constitute a rank and deliberate disobedience and annulment of the orders of this court, for which your orators and their said surety, John B. Drake, have no adequate remedy at law, but can only have relief in a court of equity where such matters are properly relievable and cognizable.

In consideration whereof your orators pray that the said Bank of North America, John McCaffrey, Edwin Walker, and William J.
47 Hynes may be made parties defendant to this, your orators' bill of supplement, and that due process of law may issue against them and each of them, requiring them respectively to appear and answer the premises and the original bill of complaint, but without oath, answer under oath being hereby expressly waived; and that pending the litigation your orators further pray that the court will forthwith enlarge said order of injunction previously granted, and specifically enjoin and restrain the said John McCaffrey and the Bank of North America and their agents and attorneys, Edwin Walker and William J. Hynes, and all their agents, servants, and attorneys from, in any manner whatever, taking any default, rules, orders, judgments, filing any petitions, or taking any other steps in the prosecution of the said action now depending in the said State court against the said John B. Drake, and that on a final hearing the court will make such injunction perpetual.

Your orators pray for all such other and further relief as may be necessary to fully establish and protect the rights of your orators and their said surety, and as the court may be competent to award in the premises, and your orators will ever pray, &c.

HENRY CRAWFORD,
Solicitor for Complainants.

48 STATE OF ILLINOIS,
County of Cook, ss:

Henry Crawford, on oath, says that he is the solicitor for said complainants in the above-entitled cause; that he has read the foregoing bill and that the contents of the same is true, except as to such matters and things as are therein stated upon information and belief, and as to those he believes to be true.

HENRY CRAWFORD.

Subscribed and sworn to before me this 20th day of October, A. D. 1879.

[SEAL.] HENRY MEISELBAR,
Notary Public.

EXHIBIT B.

In the circuit court of Cook County, to the term, A. D. 1879.

STATE OF ILLINOIS,
County of Cook, ss:

Emil Dietzsch, who sues as coroner of Cook County, Illinois, for the use of the Bank of North America, a citizen of the State of New York,

and John McCaffrey, a citizen of the State of Illinois, plaintiff, by , his attorneys, leave of court first being had and obtained, comes and files this his amended declaration, and complains of Frederic W. Huidekoper, Thomas W. Shannon, John M. Dennison, Arthur B.
49 Meeker, and John B. Drake, defendants, of a plea of debt, for that whereas heretofore, to wit, on the 10 day of October, A. D. 1874, the said Bank of North America, in a certain action then pending in the superior court of Cook County, in said State of Illinois, recovered a judgment against Chicago, Danville, and Vincennes Railroad Company for the sum of eight thousand four hundred and fourteen and $\frac{4}{100}$ dollars ($8,414\frac{4}{100}$) and costs, and that on the 8th day of May, A. D. 1877, the said John McCaffrey in the same court recovered a judgment against the said railroad company for the sum of thirty three hundred and thirty-three and $\frac{40}{100}$ dollars ($3,333\frac{40}{100}$) and costs, which said judgments were duly entered in the records of said courts; that on the 8th day of March, A. D. 1877, the said Bank of North America sued out of said court its certain writ of fieri facias against the said railroad company, and on the 8th day of May, A. D. 1877, the said McCaffrey sued out of said court its certain other writ of fieri facias against said railroad company; that each of said writs was duly directed to the sheriff of said Cook County commanding him that of the goods and chattels and property of said railroad company in said county he should cause to be made the sums of each of said writs respectively, which said writs were upon the said days of the dates thereof delivered to the said Charles Kern, sher-
50 iff of said county, to be executed; that said Kern, as such sheriff, before the return day of said writs, to wit, on the 9th and 10th days of May, A. D. 1877, the said writs then being in full force and unsatisfied, levied the same upon about one thousand tons of old iron as the property of said execution defendant, the said Chicago, Danville and Vincennes Railroad Company, and took the possession thereof and detained the same in execution of said writs; that on the 23d day of May, A. D. 1877, the said Huidekoper, Shannon, and Denison, named in said declaration, claiming to be the owners of said property so levied upon, brought in this court their certain action of replevin against the said Kern and caused a writ of replevin and summons to be issued therein, returnable at the next term of said court, which said writs were directed to the plaintiff as coroner of said county, commanding him to make the same in accordance with the statute in such case made and provided.

That the said plaintiff proceeded to execute said writs, seizing the said property described in said writ of replevin, being the same property levied upon by said sheriff under said executions in favor of the said Bank of North America and said John McCaffrey, and delivered the same to the said Huidekoper, Shannon, and Denison, having theretofore and on, to wit, the 22d day of May, 1877, at, to wit, the county of
51 Cook aforesaid, received from the said Huidekoper, Shannor, and Denison, and Arthur B. Meeker and John B. Drake, their certain writing obligatory, sealed with their seals and now shown to the court here, whereby the said Frederick W. Huidekoper, Thomas W. Shannon, John M. Denison, as principals, and said Arthur B. Meeker and John B. Drake, as sureties, acknowledged themselves to be held and firmly bound unto the said Emil Dietzsch, coroner of the county of Cook aforesaid, and to his successors in office, executors, administrators, and assigns in the penal sum of thirty-six thousand dollars ($36,000), lawful money of the United States of America, for the payment of which sum they jointly and severally bound themselves, their heirs, executors, and administrators, which said writing obligatory was and is subject to a

certain condition thereunder written whereby, after reciting to the effect following, whereas the said Frederic W. Huidekoper, Thomas W. Shannon, and John M. Denison on the 23d day of May, A. D. 1877, sued out of this circuit court of Cook County aforesaid a writ of replevin against the said Charles Kern for the following goods and chattels, to wit: About one thousand tons of railroad iron then lying along what is called the Mud Lake Tract near Twenty-fourth street, in the city of Chicago, Illinois, which said writ was returnable to the June term of said
52 court then next, it was provided in and by said condition that if the said Huidekoper, Shannon, and Denison should prosecute such suit to effect and without delay and make return of said property, if return thereof should be awarded, and save and keep harmless the said coroner in replevying the said property, viz, said one thousand tons of railroad iron, then this obligation to be void, otherwise to remain in full force and effect, as by the said condition, to the court here shown, fully appears.

And the plaintiff avers that such proceedings were afterwards had in said action of replevin that the said Charles Kern afterwards, to wit, at the May term, A. D. 1878, of said circuit court of Cook County, by the consideration and judgment of said court in said action, did obtain a judgment against said Frederick W. Huidekoper, Thomas W. Shannon, and John M. Denison for the return of said property and his costs in said suit, then and there awarded by the said court against the said Huidekoper, Shannon, and Denison, as by the record and proceedings of said court remaining in said court will more fully appear; and the said plaintiff in fact further saith that the said Huidekoper, Shannon, and Denison did not prosecute their said action with effect against the said Kern for the said taking and the alleged unjustly detaining
53 said goods and chattels, or make a return of the said property, or any part thereof, according to the form and effect of said condition of the said writing obligatory, but have hitherto neglected and refused, and still wholly neglect and refuse so to do, whereby the said writing obligatory became forfeited to the said plaintiff, so being coroner of the said county of Cook as aforesaid, and an action hath accrued to the plaintiff to demand of the defendants for the use aforesaid the sum of thirty-six thousand dollars ($36,000) above demanded. Also, for that whereas heretofore, to wit, on the 23d day of May, A. D. 1877, at, to wit, the county of Cook aforesaid, the said Huidekoper, Shannon, and Denison sued out of the circuit court of Cook County aforesaid a certain other writ of replevin, directed to the coroner of said county, sealed with the seal of said court and tested by the clerk, by which said writ the people of the State of Illinois commanded the said coroner that without delay he cause to be replevied certain goods and chattels, in said writ described, which said Charles Kern wrongfully detained, as was said, and which said goods and chattels said Kern had levied on as sheriff, by virtue of two certain writs of fieri facias sued out of said superior court of Cook County, one by said Bank of North America, upon a certain judgment for eight thousand four hun-
54 dred fourteen and $\frac{47}{100}$ dollars ($8,414\frac{47}{100}$) and costs, recovered by said bank against said Chicago, Danville and Vincennes Railroad Company upon the 10th day of October, A. D. 1874, and the other by said John McCaffrey, upon a certain judgment for three thousand three hundred thirty-three and $\frac{49}{100}$ ($3,333\frac{49}{100}$) dollars and costs, recovered by said John McCaffrey against said Chicago, Danville and Vincennes Railroad Company upon the 8th day of May, A. D. 1877, and also to summon the said Charles Kern to appear at the next term of the

said circuit court of Cook County to answer unto the said Huidekoper, Shannon, and Denison for the unlawful detention of the goods and chattels aforesaid, and to have then and there this writ, which said writ, before the making of the writing obligatory hereinafter mentioned, and before the return day of the said writ, to wit, on the 23d day of May, A. D. 1877, at the county of Cook aforesaid, was delivered to the coroner of said county in due form of law to be executed, and the said coroner then and there, by virtue of the said writ, seized and took into his possession the said goods and chattels in said writ described, and thereupon said coroner did, in accordance with the statute in such case made and provided, take from the said Huidekoper, Shannon, and Denison, with said Arthur B. Meeker and John B. Drake, as two
55 responsible freeholders of said county and sureties, a certain other bond in double the value of such goods and chattels so seized and taken as aforesaid, and the said defendants, to wit, at the county of Cook aforesaid, by their said last mentioned certain writing obligatory, sealed with their respective seals, and now to the court here shown, jointly and severally acknowledged themselves to be held and firmly bound unto the said Emil Deitzsch, coroner of said county of Cook aforesaid, and to his successors in office, executors, administrators, and assigns, in the penal sum of thirty six thousand dollars ($36,000), lawful money, for the payment of which sum they jointly and severally bound themselves, their heirs, executors, and administrators, which said writing obligatory was and is subject to a certain condition thereunder written, whereby, after reciting to the effect following, that whereas the said Huidekoper, Shannon, and Denison, on the 23d day of May, A. D. 1877, sued out of the circuit court of Cook County aforesaid a writ of replevin against said Charles Kern for the recovery of the following described goods and chattels, to wit, about one thousand tons of railroad iron, then lying along what is called the Mud Lake tract, near Twenty-fourth street, in the city of Chicago, Illinois, which said writ was returnable to the June term of said court then next, it was
56 provided in and by said condition that if said Huidekoper, Shannon, and Denison should prosecute said writ to effect and without delay and make return of said property if return thereof should be awarded and save and keep harmless the said coroner in replevying the said property, viz, said one thousand tons of railroad iron, then this obligation to be void, otherwise to remain in full force and effect, a copy of which said bond is hereto attached and marked Exhibit A; and thereupon the said coroner delivered to the said Huidekoper, Shannon, and Denison the said goods and chattels so taken and seized as aforesaid, and then and there summoned the said Kern personally to be and appear before the circuit court of Cook County, on the 1st day of the next term thereof, to be holden on the said third Monday of June then next, to answer to the said Huidekoper, Shannon, and Denison in the premises; and on the return day, and at the return term of said writ of replevin, to wit, on the 3d Monday of June, A. D. 1877, the said coroner returned the said writ to the said court at said county according to the command thereof, and also then and there returned thereupon his proceedings in said premises, and also then and there returned to said court with said writ the said bond, and the plaintiff avers that such proceedings
57 were afterward had in such action of replevin that the said Charles Kern afterwards, to wit, at the May term, A. D. 1878, of said circuit court of Cook County, by the consideration and judgment of said court in said action, did obtain a judgment against said Frederick W. Huidekoper, Thomas W. Shannon, and John M. Denison for the return

of said property and his costs in said suit, then and there awarded by said court against said Huidekoper, Shannon, and Denison in the premises, as by the record and proceedings of said court remaining in said court will more fully appear.

And the said plaintiff in fact further saith that the said Huidekoper, Shannon, and Denison did not prosecute their said action with effect against said Kern for the taking and alleged unjustly detaining the said goods and chattels, or make return of the said property, or any part thereof, according to the force and effect of the said condition of the said writing obligatory, but have hitherto neglected and refused, and still wholly neglect and refuse so to do, whereby the said writing obligatory became forfeited to the said plaintiff so being coroner of the said county aforesaid, and an action hath accrued to the plaintiff to demand of the defendants for the use aforesaid the sum of thirty-
58 six thousand dollars ($36,000) above demanded.

And whereas, also, the said defendants on, to wit, the sixth day of June, A. D. 1878, at, to wit, the county of Cook aforesaid, were indebted to the plaintiff in the sum of thirty-six thousand dollars ($36,000) for the price and value of goods and chattels then and there bargained and sold by plaintiff to said defendants at their request, and in thirty-six thousand dollars ($36,000) for work then and there done, and materials for the same provided by the plaintiff for the defendants at their request. And in thirty-six thousand dollars ($36,000) for money then and there lent by the plaintiff to the defendants at their request. And in thirty-six thousand dollars ($36,000) for money then and there paid by the plaintiff, for the use of the defendants, at their request. And in thirty-six thousand dollars ($36,000) for money found to be due from the defendants to the plaintiffs on an account, then and there stated between them, which said several moneys were to be respectively paid by the defendants to the plaintiff upon request. Yet the defendants have not paid anything of the said moneys or any part thereof, to the said plaintiff's damage of twenty-five thousand dollars ($25,000), and therefore he brings his suit, &c.

59 WILLIAM J. HYNES,
Att'y for Bank of North America, and John McCaffrey.

Know all men by these presents that we, Frederic W. Huidekoper, John W. Denison, Thomas W. Shannon, Arthur B. Meeker, and John B. Drake, are held and firmly bound unto Emil Dietzsch, coroner of the county of Cook, in the State of Illinois, and to his successors in office, executors, administrators and assigns, in the penal sum of thirty-six thousand dollars lawful money of the United States of America, for the payment of which sum we do hereby jointly and severally bind ourselves, our heirs, executors and administrators.

The condition of this obligation is such, that whereas, on the twenty-third day of May, in the year of our Lord one thousand eight hundred and seventy-seven, the said Frederic W. Huidekoper, John M. Denison, and Thomas W. Shannon sued out of the circuit court of Cook County aforesaid a writ of replevin against Charles Kern, defendant, for the recovery of the following described goods and chattels, to wit, about one thousand (1,000) tons of railroad iron formerly in the track of the Chicago, Danville and Vincennes Railroad, now lying along what is called Mud Lake tract, near Twenty-fourth street, in the city of Chicago, Ills.:

60 Now, if the said Frederic W. Huidekoper, John M. Denison,

and Thomas W. Shannon, plaintiffs, shall prosecute such suit to effect and without delay, and make return of the said property, if return thereof shall be awarded, and save and keep harmless the said coroner in replevying the said property, viz, said 1,000 tons of railroad iron, then this obligation to be void, otherwise to remain in full force and effect.

Witness our hands and seals this 22d day of May, A. D. 1877.

F. W. HUIDEKOPER, [SEAL.]
F. W. SHANNON, [SEAL.]
J. M. DENISON, [SEAL.]
By F. W. HUIDEKOPER.
A. B. MEEKER. [SEAL.]
JNO. B. DRAKE. [SEAL.]

Taken and approved by me, this 24th day of May, A. D. 1877.

GUSTAV A. KERN,
Deputy Coroner.

(Endorsed:) Filed Oct. 20, 1879. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the 13th day of December, A. D. 1879, said defendants, by their solicitors, filed in said clerk's office their demurrer to the original and supplemental bills of complaint in said entitled
61 cause, which said demurrer is in the words and figures following, to wit:

Demurrer to original and supplemental bills of complaint.

Circuit court of the United States, northern district of Illinois.

FREDERICK W. HUIDEKOPER ET AL.
v.
EMIL DIETZSCH AND CHARLES KERN ET AL. } Chancery.

The demurrer of the Bank of North America, John McCaffrey, Edwin Walker, and William J. Hynes, defendants, to the bill of complaint and supplement to said bill of complaint of Frederick W. Huidekoper et al., complainants.

These defendants respectively by protestation not confessing or acknowledging all or any of the matters and things in the said complainants' bill and supplement to said bill to be true in such manner and form as the same are therein set forth and alleged, do demur thereto, and for causes of demurrer show:

First. That it doth not appear by the said bill of complaint and supplement thereto, or either of them, what the citizenship of these defendants is, or that this honorable court hath jurisdiction over the persons of these defendants in this cause.

62 Second. That this honorable court hath no jurisdiction to enjoin proceedings in the circuit court of Cook County, in the State of Illinois, as prayed by said complainants in said bill and supplement thereto. Wherefore these defendants demand the judgment of this honorable court whether they shall be compelled to make any further or other answer to said bill and supplement, or any of the matters and things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf sustained.

WM. J. HYNES.

I certify that, in my opinion, the foregoing demurrer of the Bank of North America, John McCaffrey, Edwin Walker, and William J. Hynes, defendants to the bill of complaint of Frederick W. Huidekoper et al., complainants, is well founded in law and proper to be filed in the above cause.

R. BIDDLE ROBERTS,
Solicitor and of Counsel for Defendants.
W. J. HYNES,
Of Counsel for Defendants.

UNITED STATES OF AMERICA,
Northern District of Illinois, County of Cook, ss:

Edwin Walker, being duly sworn, does depose and say that he has read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said
63 suit or any proceeding therein.

EDWIN WALKER.

Subscribed and sworn to before me this 12th December, A. D. 1879.
[SEAL.] GEO. WILLARD,
Notary Public.

(Endorsed:) Filed Dec. 13, 1879. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 10th day of June, A. D. 1880, in the record of the proceedings of said court in said entitled cause, before the Honorable John M. Harlan, one of the justices of the Supreme Court of the United States, is the following entry, to wit:

FREDERIC W. HUIDEKOPER ET AL. }
v.
CHARLES KERN ET AL. }

The demurrer of the Bank of North America, John McCaffrey, William J. Hynes, and Edwin Walker, filed herein on December thirteenth, A. D. 1879, came on this day to be heard and was argued by counsel, and thereupon the court overruled the said demurrer, to which
64 decision of the court the said defendants at the time excepted, and the said defendants, the Bank of North America, John McCaffrey, Edwin Walker, and William J. Hynes, electing to stand by *by* their said demurrer, and declined to make any other or further plea or answer, it is ordered that the matters in the said original and supplemental bills of complaint be taken against them as confessed; and thereupon the cause coming on to be heard as to the said other defendants, Charles Kern and Emil Dietzsch, upon the original and supplemental bills, answers, replications, and the evidence adduced, the court finds that the material allegations in said original and supplemental bills are true, and that the complainants are entitled to the relief therein prayed.

It is thereupon ordered, adjudged, and decreed by the court that the temporary injunction heretofore awarded in this cause be, and the same is hereby, made absolute and perpetual, and that the said defendants, Charles Kern and Emil Dietzsch, John McCaffrey, Bank of North America, Edwin Walker, and William J. Hynes, and all and each of them, their agents, solicitors, attorneys, and representatives, be, and they are hereby, perpetually enjoined and restrained from in any man-

ner whatever prosecuting a certain action now depending in the
65 circuit court of Cook County against John B. Drake, surety for the complainants, or taking in such action any default, rule, order, or judgment, or filing any petition, pleadings, or taking any other steps whatever in the prosecution of the said action; and the said defendants, and each of them, are further hereby perpetually enjoined and restrained from instituting any action whatever in any court upon the replevin bond in the bill of complaint specified, executed by the complainants and the said John B. Drake and Arthur B. Meeker, as their sureties; and the defendants, and each of them, are further perpetually enjoined and restrained from in any manner whatever instituting any action or issuing any execution upon the alleged judgment in behalf of Emil Dietzsch, for the use of Charles Kern, against the said complainants, rendered in the circuit court of Cook County, on the sixth day of July, A. D. 1879.

It is further ordered by the court that the complainants recover their costs of said defendants.

On the same day, to wit, the 10th day of June, A. D. 1880, said defendants by their solicitor filed in said clerk's office their certificate of evidence in said entitled cause, which said certificate of evidence is in the words and figures following, to wit:

Certificate of evidence.

U. S. circuit court, northern district of Illinois.

66 F. W. HUIDEKOPER ET AL. } Chancery.
v.
CHARLES KERN ET AL. }

On the trial of the issues joined herein the complainants introduced in evidence the record and files of the action on the common law side of this court, wherein the complainants were plaintiffs, and Charles Kern was defendant, including the final judgment of said cause.

The defendants Charles Kern and Emil Dietzsch introduced in evidence certified copy of record from the circuit court of Cook County, in the case of Frederick W. Huidekoper and others were plaintiffs and Charles Kern was defendant.

67 EXHIBIT B.

UNITED STATES OF AMERICA,
State of Illinois, Cook County ss:

Pleas before the honorable W. K. McAllister, one of the judges of the circuit court of Cook County, at a term thereof begun and held at Chicago, in said county and State, on the third Monday (being the day) of May, in the year of our Lord one thousand eight hundred and seventy seven, and of the Independence of the United States the 101st.

Present, the honorable W. K. McAllister, one of the judges of the circuit court of Cook County, State of Illinois; L. L. Mills, State's attorney; Charles Kern, sheriff.

Attest:

JACOB GROSS, *Clerk.*

Be it remembered that heretofore, to wit, on the 23d day of May, A. D. 1877, Frederic W. Huidekoper et al., by Messrs. Crawford and McConnell, their attorneys, filed in said court a certain affidavit for replevin, and caused to be issued out of said court, under the seal thereof, the people's writ of replevin, directed to the coroner of Cook County to execute, which said affidavit and writ, together with the coroner's return thereon endorsed, are in the words and figures following, to wit:

68 *Affidavit for replevin.*

STATE OF ILLINOIS,
Cook County, ss:

Frederick W. Huidekoper, being duly sworn, doth depose and say that the plaintiffs, Frederick W. Huidekoper, John N. Dennison, and Thomas W. Shannon, are the owners of and are now lawfully entitled to the possession of the following goods and chattels, viz, about one thousand (1,000) tons of railroad iron formerly in the track of the Chicago, Danville & Vincennes Railroad, now lying along what is called the Mud Lake track, near Twenty-fourth street, in the city of Chicago, Illinois; and that said goods and chattels are of the value of eighteen thousand dollars. That on the 9th day of May, A. D. 1877, the defendant, Charles Kern, wrongfully took and now wrongfully detains the said goods and chattels from the said Frederick W. Huidekoper, John N. Dennison, and Thomas W. Shannon, and the said goods and chattels have not been taken for any tax assessment or fine levied by virtue of any law of this State, nor seized under any execution or attachment against the goods and chattels of the said Frederick W. Huidekoper, John N. Dennison and Thomas W. Shannon, or either of them, liable to execution or attachment, nor held by virtue of any writ of replevin against them, or either of them.

F. W. HUIDEKOPER.

Subscribed and sworn to before me this twenty-second day of May, A. D. 1877.

[NOTARIAL SEAL.] GEO. F. BIDWELL,
Notary Public.

Replevin writ.

STATE OF ILLINOIS,
County of Cook, ss:

The people of the State of Illinois to the coroner of Cook County, greeting:

69 Whereas, Frederic W. Huidekoper, John N. Dennison and Thomas W. Shannon, plaintiffs, complain that Charles Kern, defendant, unlawfully and wrongfully has taken and does detain the following described goods and chattels, to wit, about one thousand (1,000) tons of railroad iron, formerly in the track of the Chicago, Danville & Vincennes Railroad, now lying along what is called the Mud Lake track, near Twenty-fourth street, in the city of Chicago, Illinois, to the value of eighteen thousand dollars:

Therefore we command you that if the said plaintiffs shall give you bond with good and sufficient security in double the value of the said goods and chattels, as required by law, to prosecute their suit in this behalf to effect and without delay, and to make return of the said goods

and chattels, if return thereof shall be awarded, and to save and keep you harmless in replevying said goods and chattels, you cause the said goods and chattels to be replevied and delivered to said plaintiffs without delay; and also that you summon the said defendant to be and appear before the circuit court of Cook County, on the first day of the next term, to be holden at the court house in the city of Chicago, in said county, on the third Monday of June next, to answer said plaintiffs in the premises.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same, together with the bond which you shall have taken from the said plaintiffs, as before commanded, before executing this writ.

Witness Jacob Gross, clerk of said court, and the seal thereof, at Chicago, in said county, this 23d day of May, A. D. 1877.

[SEAL.] JACOB GROSS, *Clerk.*

(Endorsed:)

The plaintiffs given bond, as hereto annexed. I have taken the
70 within described property and delivered the same to the said plaintiffs, as per receipt hereon endorsed; also served this writ on the within named defendant, by reading the same to him, the 23d day of May, A. D. 1877.

EMIL DIETZSCH, *Coroner.*
By GUSTAV A. KORN, *Deputy.*

Receipt.

Received of Emil Dietzsch, coroner of Cook County, the within described property, this 23d day of May, 1877.

EDMUND L. DU BARRY,
For Huidekoper, Shannon & Dennison.

And thereupon afterwards, to wit, on the 31st day of May, A. D. 1877, there was filed in said cause a certain bond and petition for removal of said cause to the United States circuit court for the northern district of Illinois, which said bond and petition are in the words and figures following, to wit:

Bond to accompany petition for removal.

Know all men by these presents, that we, F. W. Huidekoper, John N. Dennison and Thomas W. Shannon, as principals, and A. B. Meeker, as surety, are held and firmly bound unto Charles Kern in the penal sum of one thousand dollars, lawful money of the United States, for the payment of which said sum, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 29th day of May, 1877.

The condition of this obligation is such that, whereas Frederick W. Huidekoper, Thomas W. Shannon and John M. Dennison instituted a suit at law in the circuit court of Cook County, Illinois, on the 23d day of May, A. D. 1877, and which is still pending therein, in which suit
Frederick W. Huidekoper, Thomas W. Shannon and John M. Den-
71 nison were plaintiffs, and Charles Kern defendant; and whereas the said Frederick W. Huidekoper, Thomas W. Shannon and John M. Dennison desire to remove the said suit to the United States

circuit court for the northern district of Illinois, and have filed their petition in the said circuit court of Cook County, Illinois, for such removal:

Now, therefore, if the said petitioners shall enter a copy of the record in said suit in the United States circuit court for the northern district of Illinois, at or before its next ensuing session, and shall pay all costs which the said circuit court of the United States for the northern district of Illinois shall award against the said petitioners, in case that the said circuit court of the United States shall determine that the said suit was wrongfully and improperly removed thereto, then this obligation to be null and void, otherwise to remain in full force and effect.

F. W. HUIDEKOPER. [SEAL.]
JOHN M. DENNISON. [SEAL.]
THOMAS W. SHANNON. [SEAL.]
By F. W. HUIDEKOPER, *Att'y.*
A. B. MEEKER. [SEAL.]

Petition.

In the circuit court of Cook County. June term, A. D. 1877.

STATE OF ILLINOIS,
County of Cook, ss:

FREDERICK W. HUIDEKOPER, THOMAS W. Shannon, and John M. Denison
vs.
CHARLES KERN, SHERIFF OF COOK COUNTY. } Replevin.

To the honorable judges of the circuit court of Cook County:

Your petitioners, Frederic W. Huidekoper, Thomas W. Shannon, and John M. Denison, respectfully show unto your honors that the amount involved in the above entitled cause exceeds the sum of five hun-
72 dred dollars, exclusive of all costs; that no trial has as yet been had in said cause, and that no trial could have been had thereof before the present term of this court, and that the said suit involves a controversy between citizens of different States, and can be wholly determined as between them.

Your petitioners further show unto your honors that your petitioner Frederic W. Huidekoper is now, and at the institution of this action was, a citizen of the State of Pennsylvania; that your petitioner Thomas W. Shannon is now, and at the institution of this action was, a citizen of the State of New York; that your petitioner John M. Denison is now, and at the institution of this action was, a citizen of the State of Maryland; and that the sole defendant, Charles Kern, is a citizen of the State of Illinois, and was such citizen at the institution of this action.

Your petitioners, tendering bond with good and sufficient sureties, conditioned as required by law, pray that the said suit may be transferred into the circuit court of the United States for the northern district of Illinois.

Your petitioners therefore pray that the said action may be transferred to the circuit court of the United States for the northern district of Illinois, and for all further proper relief.

F. W. HUIDEKOPER AND OTHERS,
Plaintiffs.

And thereupon, afterwards, to wit, on the 2d day of June, A. D. 1877, the following proceedings were had and entered of record in said cause, to wit:

Order, June 2, 1877.

FREDERIC W. HUIDEKOPER, JOHN M. DENISON, and THOMAS W. SHANNON
vs.
CHARLES KERN.
} 21729, 8233. Replevin.

This day came the said plaintiffs, by their attorneys, and pre-
73 sent and file their petition for the transferring of said cause into the United States circuit court for the northern district of the State of Illinois; and the court, after being fully advised in the premises, doth deny said petition on the ground that it was prematurely presented and filed.

And thereupon, afterwards, to wit, on the 30th day of June, A. D. 1877, there was filed in said cause a certain declaration, and a certain order was made and entered of record, which said declaration and order are in the words and figures following, to wit:

Declaration.

In the circuit court of Cook County, June term, 1877.

STATE OF ILLINOIS,
County of Cook, ss:

Charles Kern was summoned to answer Frederick W. Huidekoper, Thomas W. Shannon, and John M. Denison of a plea wherefore he took the goods and chattels of the said plaintiffs and wrongfully detained the same until, &c.

And thereupon the said plaintiffs, by Crawford & McConnell, attorneys, complain: For that the said defendant, on the first day of May, in the year 1877, at the city of Chicago, in the county aforesaid, wrongfully took the goods and chattels, to wit, about one thousand (1,000) tons of railroad iron, formerly in the track of the Chicago, Danville and Vincennes Railroad, now lying along what is called the Mud Lake track, near Twenty-fourth street, in the city of Chicago, Illinois, of the said plaintiffs, of the value of eighteen thousand dollars, and wrongfully detained the same until, etc.

And also, wherefore, the said defendant wrongfully detained the goods and chattels of the said plaintiffs until, etc. For that the said defend-
ant, on the first day of May, in the year 1877, in the county afore-
74 said, other the goods and chattels of the said plaintiffs, to wit, about one thousand (1,000) tons of railroad iron, formerly in the track of the Chicago, Danville and Vincennes Railroad, now lying along what is called the Mud Lake track, near Twenty-fourth street, in the city of Chicago, Illinois, of the value of eighteen thausand dollars, wrongfully detained until, etc.

And also for that, whereas the said plaintiffs, on the day last aforesaid, in the county aforesaid, w lawfully possessed as of h own property of certain other goods and chattels, to wit, of the value of dollars; and being so possessed thereof, the said plaintiff afterwards, to wit, on the same day, there casually lost the last men-

tioned goods and chattels out of h possession, and the same afterwards, to wit, on the same day, there came to the possession of the said defendant by finding, yet the said defendant, well knowing the last mentioned goods and chattels to be the property of the said plaintiff, ha not as yet delivered the same or any or either of them, or any part thereof, to the said plaintiff, though often thereto requested, but ha hitherto refused so to do, and afterwards, to wit, on the same day, there converted and disposed of the last mentioned goods and chattels to h own use.

Wherefore the said plaintiffs say that they are injured and have sustained damage to the amount of eighteen thousand dollars, and therefore they bring their suit, etc.

CRAWFORD & McCONNELL,
Plaintiffs' Attorneys.

Order, June 30, 1877.

FREDERICK W. HUIDEKOPER ET AL.
vs.
CHARLES KERN. } 24729, 8233. Replevin.

This day came the said plaintiffs, by their attorney, and moved the
75 court to transfer said cause to the United States circuit court for the northern district of Illinois, and thereupon the court continues said motion for hearing until Monday next.

And thereupon afterwards, to wit, on the 6th day of July, A. D. 1877, a certain plea was filed, and a certain order made and entered of record in said cause, in words and figures following, to wit:

Plea.

In the circuit court of Cook County, Ill's.

F. W. HUIDEKOPER ET AL.
vs.
CHARLES KERN. } 24729. Replevin.

And the defendant, Charles Kern, by E. Walker, his attorney, comes and defends the wrong and injury when, &c., and says that the plaintiffs ought not to have their aforesaid action against him, the defendant, because he says that the Bank of North America before the said time when, &c., to wit, on 8th day of March, A. D. 1877, sued out of the superior court of Cook County aforesaid a certain writ of fieri facias, of that date, against the Chicago, Danville and Vincennes Railroad Company, directed to the sheriff of the county aforesaid, and because one John McCaffray, before the said time when, &c., to wit, on the eighth day of May, 1877, sued out of the superior court of Cook County aforesaid another certain writ of fieri facias of that date against the said Chicago, Danville and Vincennes Railroad, directed to the said sheriff of said county, by which said writs the people of the State of Illinois commanded such sheriff that of the goods and chattels, lands and tenements in his county of the said Chicago, Danville and Vincennes Railroad Company, he should cause to be made the sum of eight thousand four hundred fourteen and $\frac{65}{100}$ dollars damages, and the sum of seven dollars costs of suit on the said writ issued by the said Bank of

76 North America, and that he should cause to be made the further sum of three thousand three hundred thirty three and $\frac{40}{100}$ dollars damages, and the sum of seven dollars costs of suit, on the said writ issued by the said John McCaffray, which, by the consideration of the said courts, on the days aforesaid, the said Bank of North America and John McCaffray recovered against the said Chicago, Danville and Vincennes Railroad Company, together with interest on said sums at the rate of six per centum per annum from the time of recovering the same as aforesaid, and also the further sum of dollars accruing costs on the said judgments, and that such sheriff should have the said moneys ready to render to the said Bank of North America and John McCaffray, according to law, and should make return of the said writs in ninety days after the said respective dates thereof, which said writs were thereupon, on the said days of the respective dates thereof, then delivered to the defendant, who then and from thenceforth, until and at and after the said time when, &c., was sheriff of the county aforesaid, to be executed in due form of law (copies of which said writs are hereto attached and asked to be made a part of this plea); by virtue of which said writs the defendant, as such sheriff as aforesaid, afterwards and before the return day of the said writs, to wit, on the 9th and 10th days of May, A. D. 1877 (and the said writs being then in full force and unsatisfied), there took the said goods and chattles in the said declaration mentioned and detained the same, in execution of the said writs; which are the same takings and detentions in the said declaration above supposed, &c.

And the defendant further says that the said goods and chattles in the said declaration mentioned, at the said times when, &c., were the property of the said Chicago, Danville and Vincennes Railroad
77 Company, and not of the plaintiffs, as by the said declaration is above supposed, and were subject to execution, to wit, in the county aforesaid; and this the defendant is ready to verify, wherefore he prays judgment, &c.

CHARLES KERN,
By E. WALKER,
His Attorney.

Order.—July 6th, 1877.

FREDERIC W. HUIDEKOPER, JOHN N. DENNISON, and THOMAS W. SHANNON *vs.* CHARLES KERN.	24729, 8233.	Replevin.

On motion of said plaintiffs, by their attorney, it is ordered by the court that the petition filed herein on the 31st day of May, 1877, be and it hereby is dismissed out of this court; and thereupon the said plaintiffs, Frederic W. Huidekoper, John N. Dennison, and Thomas W. Shannon, present their joint petition for the transferring of said cause into the United States circuit court for the northern district of Illinois, and offer as security a bond signed by each of them, and A. B. Meeker as surety, in the penal sum of one thousand dollars, conditioned according to law, and the court, after hearing arguments of counsel thereon, and being fully advised in the premises, doth deny said petition.

To the refusal of the court to grant said petition the said plaintiffs, by their attorney, now here except.

And thereupon, afterwards, to wit, on the 20th day of October, A. D. 1877, the following proceedings were had and entered of record in said cause, as follows, to wit:

Order.—October 20, '77.

FREDERIC W. HUIDEKOPER ET AL.
vs.
CHARLES KERN. } 21729, 3661. Replevin.

78 On motion of said defendant, by his attorney, it is ordered that said cause be placed on Judge Booth's present trial calendar as calendar No. 880½.

This case coming on for further hearing on the 28th and 31st days of May, A. D. 1878, the following, among other proceedings, were had and entered of record in said court, to wit:

FREDERIC W. HUIDEKOPER, JOHN N. DENNISON, and THOMAS W. SHANNON
vs.
CHARLES KERN. } 21729, 3661. Replevin.

This day came the said plaintiffs, by their attorney, and moved the court for a stay of proceedings in said cause; and thereupon the court, after hearing arguments of counsel thereon, and being fully advised in the premises, doth overrule said motion.

FREDERIC W. HUIDEKOPER, JOHN N. DENNISON, and THOMAS W. SHANNON
vs.
CHARLES KERN. } 21729, 3661. Replevin.

On motion of said defendant, by his attorney, the said plaintiffs are hereby ruled to reply to the pleas on file in said cause by 10 o'clock to-morrow morning, June 1st, 1878.

And thereupon, on the first day of June, A. D. 1878, there was filed in said cause a certain replication, and a certain petition and bond for removal, all of which are in the words and figures following, to wit:

Replication.

STATE OF ILLINOIS,
Cook County, ss:

In the circuit court of Cook County, March term, A. D. 1878.

F. W. HUIDEKOPER, THOMAS W. SHANNON, and John M. Dennison
vs.
CHARLES KERN. } Replevin.

79 And the plaintiffs, as to the plea of the defendant by him above pleaded, say that they, the plaintiffs, by reason of anything in that plea alleged, ought not to be barred from having their aforesaid action, because they say that the said goods and chattels described in

the said declaration at the said time, etc., were the property of the plaintiffs, and not of the said Chicago, Danville and Vincennes Railroad Company, as the defendant has above in that plea alleged, and this they pray may be inquired of by the country, &c.

CRAWFORD & McCONNELL,
Att'ys for Plaintiffs.

Petition.

STATE OF ILLINOIS,
County of Cook, ss:

In the circuit court of Cook County, May term, A. D. 1878.

FREDERIC W. HUIDEKOPER, THOMAS W. SHANNON, and JOHN M. DENNISON
vs.
CHARLES KERN, SHERIFF OF COOK COUNTY. } Replevin.

To the honorable judges of the circuit court of Cook County:

Your petitioners, Frederic W. Huidekoper, Thomas W. Shannon, and John M. Dennison, respectfully show unto your honors that the amount involved in the above entitled cause exceeds the sum of five hundred dollars, exclusive of all costs; that no trial has as yet been had in said cause, and that no trial could have been had thereof before the present term of this court, because the said cause was only this day put at issue, and that the said suit involved a controversy between citizens of different States, and can be wholly determined as between them.

Your petitioners further show unto your honors that your petitioner, Frederic W. Huidekoper, is now and at the institution of this action was a citizen of the State of Pennsylvania; that your petitioner, Thomas W. Shannon, is now and at the institution of this action was a citizen of the State of New York; your petitioner, John M. Denison, is now and at the institution of this action was a citizen of the State of Maryland, and that the sole defendant, Charles Kern, is a citizen of the State of Illinois, and was such at the institution of this action.

Your petitioners, tendering bond with good and sufficient sureties, conditioned as required by law, pray that the said suit may be transferred into the circuit court of the United States for the northern district of Illinois.

Your petitioners therefore pray that the said action may be transferred to the circuit court of the United States for the northern district of Illinois, and for all further proper relief.

F. W. HUIDEKOPER,
THOMAS M. SHANNON,
JOHN M. DENISON,
By HENRY CRAWFORD,
Their Solicitor.

STATE OF ILLINOIS.
County of Cook, ss:

Frederic W. Huidekoper, being duly sworn, on his oath says that he has read the foregoing petition, and knows that the matters and things therein stated are true.

F. W. HUIDEKOPER.

Subscribed and sworn to before me this 1st day of June, A. D. 1878.
JACOB GROSS, *Clerk.*

Bond.

Know all men by these presents that we, Frederic W. Huidekoper, Thomas W. Shannon, John M. Denison, S. P. McConnell, and Edgar S. Heaton, are held and firmly bound unto Charles Kern in the penal
81 sum of one thousand dollars lawful money of the United States, to the payment of which sum we bind ourselves, our heirs, executors and administrators firmly by these presents, dated and sealed with our seals this 1st day of June, A. D. 1878.

The condition of this bond is such that whereas the above bounden Frederic W. Huidekoper, Thomas W. Shannon and John M. Denison, have filed their petition in the circuit court of Cook County, State of Illinois, praying for the removal of a certain cause pending in said court, wherein the said Frederic W. Huidekoper, Thomas W. Shannon and John M. Denison are plaintiffs, and the said Charles Kern is the defendant, into the circuit court of the United States for the northern district of Illinois.

Now, if the said petitioners shall deposit in said circuit court of the United States a copy of the record of said cause on or before the first day of the next ensuing session of said court, and shall pay to said Charles Kern whatever costs, charges or damages may be awarded by said court if it shall remand said cause to the said circuit court of Cook County, then this obligation shall be null and void, otherwise to remain in full force and effect.

F. W. HUIDEKOPER,
T. W. SHANNON,
J. M. DENISON,
By F. W. HUIDEKOPER.
SAMUEL P. McCONNELL.
EDGAR S. HEATON.

STATE OF ILLINOIS,
County of Cook, ss:

Edgar S. Heaton, being duly sworn, on his oath says that he is worth, in unincumbered real estate in Cook County, over five thousand dollars.
EDGAR S. HEATON.

82 Subscribed and sworn to before me this 1st day of June, A. D. 1878.
[NOTARIAL SEAL.] ISAAC R. DILLER.
Notary Public.

And thereupon, on the 3d day of June, A. D. 1878, there was filed in said cause certain objections to petition, and the following proceedings were had and entered of record, all of which are in the words and figures following, to wit:

In the circuit court of Cook County.

FREDERIC W. HUIDEKOPER ET AL.
vs.
CHARLES KERN.

The defendant shows the following causes why the plaintiffs' petition

herein, filed June 1, 1878, for the removal of this cause to the United States circuit court for the northern district of Illinois, should not be granted by this court, to wit:

1st. This court has exclusive jurisdiction of said cause.

2d. The said United States circuit court has no jurisdiction of the subject matter of said action.

3d. Said petition was not filed in apt time. Said action was brought to the June term of this court, 1877; at least ten terms of this court have intervened since the commencement of said action, and before the filing of said petition and the making of plaintiffs' motion, at which action could have been tried.

E. WALKER.

4th. That the said Frederic W. Huidekoper is and was at the time of filing said petition a resident and citizen of the State of Illinois.

E. WALKER,
Att'y for Def't.

83 *June 6th*, '78.

FREDERIC W. HUIDEKOPER, JOHN N. DENnison and Thomas W. Shannon
vs.
CHARLES KERN. } 24729, 3664. Replevin.

This day came again the said parties by their respective attorneys, and the said plaintiffs by their said attorney now here present, and file their petition for the transferring of said cause to the United States circuit court for the northern district of Illinois, and the court after hearing arguments of counsel thereon, and being fully advised in the premises, doth deny said petition, to which ruling of the court the said plaintiffs by their said attorney now here except, and issue being joined between the said parties, thereupon came the jurors of a jury of good and lawful men, to wit: George S. Malley, E. Wilson, Frank Higgins, H. J. Ostrander, W. H. Wachter, William Dart, J. N. Beecher, William Scott, J. H. Gunning, Alexander Joice, James A. Thorn and Frederick Williams, who were duly impaneled and sworn to well and truly try the issues joined in said cause, and a true verdict render according to the evidence, and who, after hearing a part of the testimony (the hour of adjournment having now arrived), were allowed to separate and meet the court at the coming in thereof to-morrow morning.

And now here the said plaintiffs, by their attorney, state, orally, in open court, that they went into the trial of said cause under protest, on account of the want of jurisdiction of said court.

June 4th, 1878.

FREDERIC W. HUIDEKOPER, JOHN N. DENnison and Thomas W. Shannon
vs.
CHARLES KERN. } 24729, 3664. Replevin.

84 This day came again the said parties by their respective attorneys, and thereupon also came the jurors of the jury aforesaid, who, after hearing further testimony (the hour of adjournment having now arrived), were allowed to separate and meet the court at the coming in thereof to-morrow morning.

June 5th, 1878.

FREDERIC W. HUIDEKOPER, JOHN N. DENNISON and THOMAS W. SHANNON
vs.
CHARLES KERN. } 24729, 3664. Replevin.

This day came again the said parties by their respective attorneys, and thereupon also came the jurors of the jury aforesaid, who after hearing further and concluding testimony, as well as part of the arguments of counsel (the hour of adjournment having now arrived), were allowed to separate and meet the court at the coming in thereof to-morrow morning.

June 6th, '78.

FREDERIC W. HUIDEKOPER, JOHN N. DENNISON and THOMAS W. SHANNON
vs.
CHARLES KERN. } 24729, 3664. Replevin.

This day came again the said parties by their respective attorneys, and also came the jurors of the jury aforesaid, and thereupon the plaintiffs' attorney having filed a certain order from the Federal court, declined to address the jury, the defendant's attorney proceeded with his argument to the court and jury; at the conclusion thereof, the plaintiffs, by their counsel, filed their motion in writing to dismiss their said cause, and the arguments of counsel being thereupon heard, and due deliberation had, the court doth sustain said motion, and doth dismiss said cause, and thereupon the said jury are dismissed from further consideration of the premises.

Therefore it is considered and adjudged by the court that the
85 defendant go hence without day and recover of said plaintiffs his costs and charges in this behalf expended, to be taxed, and that he have execution therefor.

It is further considered and adjudged by the court that the said defendant have the writ of retorno habendo for the return of the following described property replevied, to wit: About one thousand (1,000) tons of railroad iron, formerly in the track of the Chicago, Danville & Vincennes Railroad, now lying along what is called the Mud Lake track, near Twenty-fourth street, in the city of Chicago, Illinois.

STATE OF ILLINOIS,
County of Cook, ss:

I, Jacob Gross, clerk of the circuit court of Cook County, and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the above and foregoing Exhibit B to be a true, perfect, and complete copy of all papers filed and all proceedings had and entered of record in a certain cause lately pending in said court on the common law side thereof between Frederick W. Huidekoper et al., plaintiffs, and Charles Kern, defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Chicago, in said county, this 30th day of May, 1877.

[SEAL.] JACOB GROSS, *Clerk.*

86 It is agreed that the following copy of the motion to dismiss, filed June 6, 1878, shall be taken and considered as part of the record, the original motion having disappeared from the files.

Circuit court of Cook Co.

F. W. HUIDEKOPER ET AL.
ag'st
CHARLES KERN. } Replevin.

The plaintiffs, protesting as they have hitherto protested that this court has had no jurisdiction over this cause since its removal into the circuit court of the United States for the northern district of Illinois, on July 27, 1877, hereby dismiss out of this court so much of this cause as remains in this court.

HENRY CRAWFORD.

The above certificate of evidence is satisfactory to me.

H. CRAWFORD.

The foregoing is all the evidence in this cause.
June 12, 1880.

JOHN M. HARLAN,
Circuit Justice.

(Endorsed:) Filed June 10, 1880. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 12th day of June, A. D. 1880, in the record of the proceedings of said court in said entitled cause, before the
87 hono. John M. Harlan, one of the justices of the Supreme Court of the United States, is the following entry, to wit:

FREDERIC W. HUIDEKOPER ET AL.
v.
CHARLES KERN ET AL. } In chancery.

This cause coming on for further hearing, the parties being present by their respective counsel, the defendants, Charles Kern, Emil Dietzsch, the Bank of North America, John McCaffrey, William J. Hynes, and Edwin Walker, now pray an appeal to the Supreme Court from the final decree entered in said cause on the tenth instant which said appeal is allowed by the court upon the defendants filing a bond for costs of appeal in the penal sum of two hundred and fifty dollars ($250), with Edwin Walker as principal, and William P. Rend as surety, which said bond is now presented, accepted by the court, and filed in said cause.

Whereupon the parties by their respective counsel now stipulate in open court to submit said appeal upon printed argument under the twentieth rule of the Supreme Court at the next term thereof, the appellants to file their arguments on or before the first day of December next.

88 On the same day, to wit, the 12th day of June, A. D. 1880, said defendants by their solicitors filed in said clerk's office their appeal bond in said entitled cause, which said bond is in the words and figures following, to wit:

Appeal bond.

Supreme Court of the United States.

FREDERICK W. HUIDEKOPER, THOMAS W. Shannon, John N. Dennison
v.
CHARLES KERN, EMIL DIETZSCH, THE BANK of North America, John McCaffrey, William J. Hynes, Edwin Walker.

Know all men by these presents, that we, Edwin Walker, as principal, and William P. Rend, as surety, both of the city of Chicago, and State of Illinois, are held and firmly bound unto Frederick W. Huidekoper, Thomas W. Shannon, and John N. Dennison, in the sum of two hundred and fifty dollars, to be paid the said Frederick W. Huidekoper, Thomas W. Shannon, and John W. Dennison, their executors and administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly, and severally, and each of our heirs, administrators and executors, firmly by these presents, sealed with our seals this 12th day of June, A. D. 1880.

89 Whereas the said Edwin Walker, Charles Kern, Emil Deitzsch, The Bank of North America, John McCaffrey, and William J. Hynes, have prosecuted an appeal to the Supreme Court of the United States to reverse a decree entered in the above-entitled cause in the circuit court of the United States for the northern district of Illinois, on the 10th day of June, 1880:

Now, therefore, the condition of this obligation is such that if the above-named Charles Kern, Emil Deitszch, The Bank of North America, John McCaffrey, William J. Hynes, and Edwin Walker shall prosecute their said appeal to effect and answer all costs if they shall fail to make good their appeal, then this obligation shall be void, otherwise to remain in full force and virtue.

EDWIN WALKER. [SEAL.]
WILLIAM P. REND. [SEAL.]

Approved June 12, '80.

JOHN M. HARLAN,
Circuit Justice.

(Endorsed:) Filed June 12th, '80. Wm. H. Bradley, cl'k.

And afterwards, to wit, on the 1st day of July, A. D. 1880, said parties, by their solicitors, filed in said clerk's office their stipulation in said entitled cause, which said stipulation is in words and figures
90 following, to wit:

Stipulation.

In the Supreme Court of the United States.

FREDERICK W. HUIDEKOPER ET AL.
v.
CHARLES KERN ET AL.

Appeal from circuit court, northern district of Illinois.

It is hereby stipulated that the cause now pending in this court on

writ of error to the circuit court of the United States for the northern district of Illinois, between the plaintiffs and the said Kern and Deitzsch, shall be submitted under the 20th rule with the above-entitled cause, the plaintiffs in error to file briefs on or before the first day of December next; also that the record in said cause may be used and considered as a part of the record in this cause, the appellee herein waiving a copy of such record in the certificate of evidence filed in this cause, but the stipulation between counsel as to the last motion to dismiss filed in the State court is to be considered a part of the record on both appeals, the parties hereby stipulating to submit both the law and chancery cause under the 20th rule, and as far as practicable under one argument.

Chicago, June 28th, 1880.

H. CRAWFORD,
Att'y for Pl'ffs.
E. WALKER,
Att'y for Def'ts.

91 (Endorsed:) Filed July 1, 1880. Wm. H. Bradley, clerk.

92 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein Frederic W. Huidekoper et al. are complainants and Charles Kern et al. are defendants, as the same appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 30th day of August, A. D. 1880, and of our Independence the 105th.

[SEAL.] WM. H. BRADLEY,
Clerk.

(Indorsement on cover:) No. 854. Charles Kern, Emil Dietzsch, The Bank of North America, John McCaffrey, William J. Hynes, and Edwin Walker, appellants, vs. Frederick W. Huidekoper, Thomas W. Shannon, and John N. Dennison. N. Illinois, C. C. U. S. Filed September 10, 1880.

SUPREME COURT, U.S.
FILED
NOV 26 1880

IN THE

UNITED STATES SUPREME COURT.

CHARLES KERN, EMIL DIETZSCH, THE BANK OF NORTH AMERICA, JOHN McCAFFREY, WILLIAM J. HYNES, AND EDWIN WALKER,
Appellants,

vs.

FREDERICK W. HUIDEKOPER, THOMAS W. SHANNON, AND JOHN N. DENNISON,
Appellees.

BRIEF AND ARGUMENT FOR APPELLANTS.

E. WALKER,
For Appellants.

BEACH, BARNARD & CO., LEGAL PRINTERS, 104 RANDOLPH STREET.

IN THE

UNITED STATES SUPREME COURT

CHARLES KERN, EMIL DIETZSCH, THE BANK OF NORTH AMERICA, JOHN McCAFFREY, WILLIAM J. HYNES, AND EDWIN WALKER,
Appellants,

vs.

FREDERICK W. HUIDEKOPER, THOMAS W. SHANNON, AND JOHN N. DENNISON,
Appellees.

STATEMENT OF FACTS.

This is a bill in equity in the Circuit Court of the United States, for the Northern District of Illinois, at the July term thereof, A. D. 1878, by Frederick W. Huidekoper, Thomas W. Shannon and John N. Dennison, to enjoin Charles Kern, the sheriff, and Emil Dietzsch, the coroner of Cook County, in said State, from further prosecuting a certain action then pending in the Circuit Court of said county.

The undisputed facts pertaining to this matter are as follows: In October, 1874, The Bank of North America recovered a judgment in the Superior Court of Cook County, Illinois, against the Chicago, Danville and Vincennes Railroad Company for the sum of $8,414.97 and

costs. On May 8, 1877, one John McCaffrey recovered a judgment against said railroad company, in same court, for the sum of $3,333.40 and costs, and, on the said 8th day of May, 1877, executions were issued upon both of said judgments, and on the same day delivered to the appellant Kern, then the sheriff of said county of Cook, to be executed. These executions, on the 9th and 10th days of May of the same year were levied by the sheriff upon about 1,000 tons of old iron, as the property of the said railroad company, the defendant in said executions, and the sheriff took possession of said iron under said levies.

On the 23d day of May, the said Huidekoper, Shannon and Dennison, instituted in the Circuit Court of Cook County an action of replevin, claiming to be the owners of said iron so levied upon, and upon their application a writ of replevin was issued to the appellant, Dietzsch, then the coroner of said Cook County; and a bond having been given to said coroner as required by the statute, he executed said writ of replevin, and delivered the iron to the plaintiffs in said replevin suit. The replevin bond was in the penal sum of $36,000, and was signed by said Huidekoper, Shannon and Dennison, and by John B. Drake and A. B. Meeker. This action of replevin was commenced to the June term, 1877, of the said Circuit Court—said term commencing on the third Monday in said month. On the 31st of May, 1877, the plaintiffs in said replevin suit filed therein, in said State Court, their petition and bond for the removal of said cause into the Circuit Court of the United States for the Northern District of Illinois, and on the second day of June following (which was prior to the return day of the writ), submitted said petition to said State Court, and asked an order for the removal of said cause. The petition was denied by the said court, and the order of denial entered, the reason then given being, that the application was premature. On June 30th, 1877, the plaintiffs

filed their declaration in said action of replevin in said State Court, and on the same day again called up their petition and motion for removal of said cause into the United States Court, which was again denied, and the order of denial entered of record. On the 6th day of July following, Kern filed his pleas in said action of replevin, and thereupon the plaintiffs dismissed their petition for removal of the said cause, but immediately thereafter re-filed it, and again presented it to the said court, with a bond, and a third time asked for the order of removal, which was again denied by the said court. The case seems to have stood in the State Court in this position until the 28th day of May, 1878—about one year after its commencement—on which day plaintiffs appeared in said State Court, by their attorney, and moved for a stay of proceedings in said cause, which motion the State Court denied, and on the same day entered a rule that plaintiffs should reply to the pleas in said cause.

On the 1st day of June, 1878, plaintiffs filed their replication, and on the same day filed another petition in said State Court for the removal of said cause into the United States Court for the Northern District of Illinois, which last petition was entitled in said cause, as then pending in the Circuit Court of Cook County, referred to the cause as pending in said court, and was verified by the affidavit of one of the plaintiffs. The bond filed with said petition also recited that the cause was then pending in the Circuit Court of Cook County. The motion based upon these papers was argued and submitted to the State Court, and was overruled, and the plaintiffs excepted to the ruling of said court. On the 3d day of June, 1878, the issues in said replevin suit being joined, and both parties being present by their counsel, said cause was called for trial, a jury impaneled and sworn, and the trial was entered upon and continued through the 3d, 4th, 5th and 6th days of

June, both parties introducing evidence and examining witnesses. While the trial was proceeding, and on June 5th, 1878, a sort of jurisdictional order seems to have been entered in the lower court, declaring that a transcript of the case from the Circuit Court of Cook County had been filed in ssid court on the 27th day of July, 1877, asserting the exclusive jurisdiction of said court over the cause as removed from the State Court, and directing that the cause should be placed upon the trial calendar of the court for trial. The order refers to one made on the 14th day of November, 1877, which is simply an approval of the filing of the record in said court on the 27th day of July, 1877. From these statements it appears that notwithstanding the refusal of the State Court to enter the order transferring said cause into the United States Circuit Court, the plaintiffs in said replevin suit took their transcript from the State Court and filed it in said United States Circuit Court on the 27th of July, 1877, and subsequently procured the orders above referred to. On the 6th of June, 1878, that being the fourth day of the trial of the replevin cause in the State Court, the plaintiffs, by their attorney, moved the State Court to dismiss the said action of replevin, which motion was sustained and the cause dismissed, and the usual order and judgment entered, requiring the return of the property, and directing the issuing of the writ of *retorno habendo*.

The writ of *retorno habendo* was issued upon the judgment of the court, which plaintiffs in the replevin suit refused to obey, and an action of debt upon the replevin bond was thereupon commenced in the Circuit Court of Cook County, on the 7th day of June, 1877, against Huidekoper, Shannon, Dennison, Meeker and Drake. All this occurred prior to the filing of the bill in said court, upon which the injunctional order was issued. The action upon the bond was in the name of Dietzsch, as coroner, for

the use of Kern, as sheriff, they of course being merely nominal parties, the substantial interest in the litigation being owned by the judgment and execution creditors, the Bank of North America and John McCaffray.

On the 10th day of June, A. D. 1878, Huidekoper, Shannon and Dennison, filed their bill in the Circuit Court of the United States for the Northern District of Illinois, against Kern and Deitzsch, and asked an injunction against them, restraining them, their attorneys, &c., from prosecuting any action upon said replevin bond, or proceeding any further with the suit already instituted on it in the State Court. This bill was considered by Mr. Justice HARLAN, who on the 3d day of July, 1878, directed an order to be entered granting the injunction according to the prayer of the bill.

The foregoing facts are fully stated in the answer of Kern and Deitzsch, (printed record pages 7 and 13.)

No replications have ever been filed to these answers, and we assume that the facts therein stated are true.

The bill alleges the commencement of the replevin suit; the delivery of the bond to the Coroner, and the seizure of the property, as well as its delivery to the complainants. That on the 6th day of July, A. D. 1877, the plaintiffs in said action filed their petition and bond for the removal of said cause from the State to the Federal Court, and that such removal was perfected on the 27th day of July, A. D. 1877, by the filing in the court below a transcript of record of said cause. That said court by its formal orders on the 14th November, A. D. 1877, and on the 5th day June, A. D. 1878, took exclusive jurisdiction of said action; that notwithstanding the premises, said Kern with full notice of the removal of said cause, and of the several orders of said court, caused a judgment to be entered in the Circuit Court of Cook County, in favor of himself, and against these

complainants, pretending to adjudge and order the return of the identical property embraced in said suit.

The bill charges that said pretended judgment is utterly null and void; that it was entered up in a court having no jurisdiction whatever over either the parties or the subject matter of the controversy.

It charges that said Kern had caused to be instituted in the said Circuit Court of Cook County, an action upon said replevin bond in the name of his co-defendant Dietzsch, and had ordered process theron.

It charges that all this is contrary to equity, and good conscience; will tend to a multiplicity of suits, and cause great annoyance and expense to the complainants and prays an injunction, &c., (printed record, pages 1, 2 and 3.)

It further appears by the record, that on the first day of July, A. D. 1878, a preliminary injunction was entered in said cause, restraining the appellants, their agents and attorneys, from in any manner prosecuting said action upon said replevin bond, against the appellees or the sureties on said bond, or in any manner whatever enforcing said judgment of return entered in said Circuit Court of Cook county. (Printed Record, p. 5).

On the twentieth day of October, A. D. 1879, the appellees filed in said cause their certain supplemental bill, in which it is charged that the said Bank of North America and John McCaffrey, since the filing of the original bill herein, had given out and pretended that the said Kern, for whose use said action upon said replevin bond was instituted in said Circuit Court of Cook County, was made such plaintiff, simply because he was at that time sheriff of Cook County, and had in his hands certain writs of execution in favor of said Bank of North America and John McCaffrey, and that they were the real parties in interest; that Edwin Walker was originally their attorney.

and had personal knowledge of said writ of injunction. It also charges, that the said Bank of North America and John McCaffrey, had personal knowledge of the existence of the injunction granted by said court, on the 3d day of July, A. D. 1878. Also, that said judgment of said Bank of North America was the personal property of the said Edwin Walker, who alone had authority to control the same. That the said bank, McCaffrey, and Walker, while knowing the existence of said injunction, but conspiring together to defraud the complainants, and to defeat and to disobey the order of court, had procured the appellant, Hynes, to appear before said Circuit Court in said action, which was then being prosecuted against the said John B. Drake, one of the sureties upon said bond, and file their certain petition, praying that the said bank and the said McCaffrey, might be substituted as parties plaintiff in said action, in place of the said Kern. That said Hynes had caused notice to be served upon the said Drake, that such motion would be made, and for a rule on the said Drake to then plead to said action.

That on the first day of October, A. D. 1879, such order was entered in the State court, substituting the names of the Bank of North America and John McCaffrey, parties plaintiffs, and an amended declaration was filed, and a rule entered against the said Drake, requiring him to plead to the same within twenty days after the filing thereof.

It charges that each and all of said acts, are in violation of the injunction and orders of said court in this cause, and for the purpose of defeating the jurisdiction of the said court, and evading its orders.

The said parties claiming, that because the said Bank of North America and John McCaffrey, the judgment creditors, represented by the said Kern, were not parties to this action, that they were not in any manner bound by the injunction herein entered.

The appellee prayed for an injunction, restraining the said Bank of North America, John McCaffrey, Edwin Walker, and William J. Hynes, their agents and attorney, from in any manner whatever, taking any default, rules, orders, judgments, filing any petition, or taking any other steps in the prosecution of the said action then pending in said State court against the said John B. Drake. (Printed Record, p. 16).

It appears, that after filing the original bill in this cause, the said action in the State court was dismissed as to all of the defendants, except John B. Drake, and was then being prosecuted against him alone.

On the 20th day of October, A. D. 1879, the Bank of North America, McCaffrey, Hynes, and Walker, filed a joint demurrer to said original and supplemental bill of complaint. (Printed Record, p. 23).

Two causes of demurrer are assigned:

First. That it does not appear in said bill and supplement, that said Circuit Court had jurisdiction over the persons of the defendants in said cause.

Second. That the Circuit Court had no jurisdiction to enjoin proceedings then pending in the State court.

On the 10th day of June, A. D. 1880, the demurrer was overruled, and a final decree entered in the cause, perpetually enjoining the defendants therein from further prosecuting the action then depending in the State court against John B. Drake, and from taking, in such action, any default, rule, order or judgment, or filing any petition or pleading therein. Also, from in any manner whatever, instituting any action, or issuing any execution upon the alleged judgment, in behalf of the said Dietzsch, for the use of the said Kern, rendered in the Circuit Court of Cook

County, on the 6th day of July, A. D. 1878. (Printed Record, p. 24).

Upon the hearing in the court below, the appellees presented to the court, in support of their bill, the record of said replevin action, as presented to this court in No. 538, while the appellants, Kern and Dietzsch, in support of their answers, presented to the court below a full and complete transcript of record of said replevin action, in said State court, certified by the clerk thereof.

These two records present to this court all the evidence that was considered by the court below, and support fully the answers of the appellants, Kern and Dietzsch, (printed record pages 25 to 37, inclusive.)

SUPREME COURT OF UNITED STATES.

Charles Kern, Emil Dietzsch, The Bank of North America, John McCaffrey, William J. Hynes and Edwin Walker,
Appellants.
vs.
Frederick W. Huidekoper, Thomas W. Shannon and John N. Dennison,
Appellees.

ASSIGNMENT OF ERRORS.

Now comes the appellants, Charles Kern, Emil Dietzsch, the Bank of North America, John McCaffrey, Edwin Walker and William J. Hynes, by E. Walker their attorney, and say, that in the record and proceedings, aforesaid, there is manifest error in this, to wit:

First. The court erred in entering a preliminary injunction in said cause.

Second. The court erred in overruling the demurrer of the appellants, the Bank of North America, McCaffrey, Walker and Hynes.

Third. The court erred in entering a decree for perpetual injunction in said cause.

Fourth. The record does not show that the court below had jurisdiction over the parties to said action.

Fifth. The court below had no jurisdiction to enjoin the said proceedings, or said action pending in said state court.

Sixth. The court below is prohibited by law from issuing the said writ of injunction, to stay the proceedings, then pending in the said state court.

And the said appellants pray that the decree, aforesaid may be reversed, annulled and altogether held for naught, and that they may be restored to all things which they have lost by reason of said decree.

E. WALKER,
Attorney for Appellants.

ARGUMENT.

I.

THE STATE COURT HAD EXCLUSIVE ORIGINAL JURISDICTION OVER THE REPLEVIN ACTION, AND SAID ACTION WAS THEREFORE NOT REMOVABLE UNDER THE ACT OF 1875, AND JURISDICTION WAS PROPERLY RETAINED BY THE STATE COURT.

At the commencement of this controversy, we find the State court in full possession of the subject matter, of the *res*, and the Federal Court without legal authority or power, by writs, process or orders, to wrest its possession from the State Court. The appellees, will be forced to admit that the original and exclusive jurisdiction over the action of replevin was in the State Court, and that such court only surrendered to them the possession of such property upon their delivering a bond as required by the State Statute, which under the law became substituted for the property, and remained in the custody and under the control of the State Court.

In *Taylor, et al.* v. *Carryl*, 20 Howard, 583. The court held that property seized and held by a sheriff under process from a State Court, while in the custody of the officer could not be seized or taken from him by a process from the Federal Courts. Followed by *Freeman* v. *Howe, et al.*, 27 Howard, 450, and *Buck* v. *Colbath*, 3 Wallace, 334.

The Supreme Court of the State of Illinois, in *Munson* v. *Harrimon*, 34 Ill., 422, holds that neither a State nor a Federal court has any right to interfere with or control the process or proceedings of the other. This was a case where a writ of replevin had been issued by the State court against property held by the marshall under execution.

The writ of replevin was executed and the property delivered to the complainants on the 24th day of May, 1877, the summons issued and made returnable on the first day of the then next term of court—the 3d Monday in June, . No *narr.* had been filed, and none was required until the June term, and yet, on the 31st day, before the court could make any judicial order in the case, the plaintiffs filed their petition and motion for the removal of the case to the Federal court, under the removal act of 1875. This motion being denied, the plaintiffs again, before the defendant had appeared or was required to appear to the action, called up their motion for an order of removal, which was again denied. Upon the 6th day of July, after an appearance and answer by the defendant, the plaintiffs, for the third time upon the same petition and bond, entered their motion for an order removing said cause to the Federal court, which was again denied. Upon the 27th day of July, 1877, a transcript was filed by the plaintiffs, in the replevin action, in the office of the clerk of the Federal court, and it is claimed by the appellees that said court had exclusive jurisdiction over said action from and after the filing of the transcript on the 27th of July, as evidenced by its order of November 14, 1877. There was no appearance by the defendant in said action on November 14th, nor had he ever appeared to the action in said court, except specially to raise the question of jurisdiction. Whatever may be the ruling of the court at the present time upon the question of jurisdiction, it cannot, under the rules of former decisions, be held that the State court had not full, complete and exclusive jurisdiction over the action from the 23d day of May until the 27th day of July, 1877, and that every order, judgment or decree made in the case during said time should be observed by the parties, and respected by all other courts. Upon the motion to remand this case, it was conceded that the State court properly

overruled the first and second motions for removal—that the record did not then disclose a removable cause. Here was neither want of jurisdiction nor error in the State court. If this be true, how was the State court deprived of jurisdiction to hear a similar motion upon the same petition, when presented for the third time on the 6th of July? The cause was then in the State court; it had complete jurisdiction over the parties and subject matter, and a motion was made in due course, by the very parties now denying its jurisdiction to either hear or enter judgment on the motion. If the State court then had jurisdiction, its judgments must stand until reversed by a court of appellate jurisdiction. The State court overruled the third motion for removal, holding that the Circuit Court of the United States had neither original nor appellate jurisdiction over the subject matter of the action, and, therefore, the case was not removable. In this ruling the court followed the precedents of Federal and not State authorities.

Upon this point we call your Honor's attention to a few leading cases:

Smith v. *Rimes et al.*, 2d Sumner, p.338.

This was an action of trespass on the case for defrauding the plaintiff in the purchase of certain lands situate in the State of Maine. Action originally brought in Court of Common Pleas, Worcester County, Massachuetts. Rines, one of the defendants, a citizen of the State of Maine, upon petition, moved the court for a removal of the cause into the Circuit Court of the United States. Plaintiff entered a protest against the removal. Removal was ordered by the court, with a stay of further proceedings in the State court. Motion in the Circuit Court to remand, upon the ground that it was not a removable cause under the act of Congress. Held, Justice STORY:

"The 12th section of the Judiciary Act of 1789 provides "'that if a suit be commenced in any State court against "an alien or by a citizen of a State in which the suit is "brought against a citizen of another State, and the mat- "ter in dispute exceeds the sum or value of $500, exclusive "of cost, to be made to appear to the satisfaction of the "court, and the defendant shall, at the time of entering his "appearance in such State court, file a petition for the re- "moval of the cause for trial into the next Circuit Court, "to be held in the district where the suit was pending, and "offer good and sufficient surety for his entering in such "court, on the first day of its session, copies of said process "against him, and also for his then appearing and entering "special bail in the cause, if special bail was originally "requisite therein. It shall be the duty of the State court "to accept the surety, and proceed no further in the cause, "&c. And the said copies being entered in such court of "the United States, the cause shall then proceed in the "same manner as if it had been brought there by original "process.'

"It is apparent from the language of the closing passage "of the section above quoted, that it contemplates such "cases, and such only, to be liable to removal, as might, "under the law, or, at all events, under the constitution, "have been brought before the Circuit Court by original "process, and this consideration under the actual state of "authorities is most important. My brother, the late Mr. "Justice WASHINGTON, so thought in the case of *Beardsley* "v. *Torrey*, 4 Wash. C. I. R. R., 286.

"'If,' said he, 'this suit could not have been maintained "against S., under the 11th section of the judiciary act, if "it had originated in this court, it cannot be removed into "this court under the 12th section, so as to subject that "party to the jurisdiction of this court.'"

The same doctrine was held in the case of *Strawbridge* v. *Curtis et al.*, 3 Cranch, 267. Referring to that case, Judge STORY says:

" The case of *Strawbridge* v. *Curtis* has never been de-
" parted from, but has constantly been recognized as the
" basis of subsequent decisions of The Supreme Court up-
" on this branch of jurisdiction."

In the case of *Ward* v. *Arredondo*, 1 Paine, 410, Mr. Justice THOMPSON *held:* " It is very evident that Ward,
" the plaintiff, could not originally have filed his bill in
" this court against Thomas as one of the defendants, and
" it would seem to follow, as a necessary consequence, that
" if jurisdiction could not have been entertained directly,
" it ought not to be acquired indirectly."

The cases cited in opposition to the rule for which we contend, are not in conflict with the authority we have referred to. Even if they were, we respectfully submit that the State Court should be commended for following the decisions of so eminent and revered a jurist as Mr. Justice STORY.

In all the cases cited from Blatchford in the court below, the only question was that of jurisdiction over the parties defendant. Actions had been commenced in State Courts against non-resident corporations, by service upon a resident agent under a State statute.

The corporations appeared in the State Court, and upon petition caused the cases to be removed to the Federal Court, and in that court appeared and moved to dismiss for the reason that the defendant could not be sued out of the district of its incorporation.

The court held that the appearance of the defendant was a waiver of the personal privilege of being sued only in the district where it had a residence.

The principal authority relied on by the appellees, is *Gaines* v. *Fuentes et al.*, 92 U. S., 10. This action was brought to the Supreme Court by writ of error to the Supreme Court of the State of Louisiana. The action was originally brought in a local court of the Parish of New Orleans, to annul the will of Daniel Clark, the father of the plaintiff in error. Mrs. Gaines filed her verified petition with proper averments for the removal of the cause, under the prejudice act (so called) of 1867. The State Court held that the Federal Court had no original jurisdiction over the subject matter, and that the case was, therefore, not removable.

This was the principal question presented and discussed. The Supreme Court held that the Federal Court had original jurisdiction. The particular law under discussion was the act of 1867. Mr. Justice FIELD, in his opinion, after referring to the preceding legislation upon the subject of removals, says:

"But the experience of parties immediately after the "late war, which powerfully excited the people of different "States, and in many instances, engendered bitter enmi-"ties, satisfied congress that further legislation was re-"quired fully to protect litigants against influences of that "character."

This act, then, in the opinion of the court, was passed to meet a peculiar condition of society, a feeling of intense bitterness between the citizens of different States, that fortunately does not now exist. It was a construction of a special law, essentially different from the act of 1875.

The court held that there was original jurisdiction, that the case was removable under the act of 1867, "even "though it should be admitted that that court could not "have taken original jurisdiction." *Smith* v. *Rines*, 2

Sumner, is approved as a correct construction of the law as it stood prior to the act of 1867. "No case could "then be transferred from a State Court to a Federal "Court, on account of the citizenship of the parties, "which could not have been originally brought in the "Circuit Court."

The right of removal is here claimed under the act of 1875. This act does not authorize a removal not provided for by legislation prior to the act of 1867, and by the act specially under consideration by Mr. Justice STORY in *Smith* v. *Rhines*.

The essential change of the former acts by that of 1875 is in giving the right of removal to both parties, and changing the time of application, or presenting the petition, and enlarging the original jurisdiction of the Circuit Courts. The law of 1789 provided that *any case* where the controversy was between citizens of different States, and the amount in controversy exceeds the sum of five hundred dollars, may be removed.

The first section of the act of 1875 defines and enlarges the original jurisdiction of the Circuit Courts, and section two of the act relates to removals. Judge DILLON, in "*Removal of Causes*," p. 27, construing this act, says: "As to suits which may be removed, it follows the "language of the first section; so that it is true, in gen- "eral, that any cause may, at the proper time and in the "prescribed mode, be removed from the State Court to "the Circuit Court of the United States, which by reason "of the subject matter, or the citizenship of the parties, "might have been instituted originally in the Federal "Court."

It would seem to be the opinion of Judge DILLON that under the law of 1875 only such cases are removable as came within the original jurisdiction of the Circuit Court.

In *Taylor* v. *Rockafellow*, a recent case in the United States Circuit Court, Western District of Pennsylvania, not yet reported, the question of right of removal under the act of 1875 is very fully discussed by Mr. Justice STRONG. The case had been removed from the State Court, and upon a motion to remand, the court upon this precise question, *held:*

"Whatever may have been the doctrine held prior to "the act of Congress of 1875, that act has introduced "great changes of the law. The 1st section extends the "jurisdiction of the Circuit Courts, nearly, if not quite, as "far as the 2d section of the 3d article of the constitution "authorizes, alike in regard to the subject-matter of the "suit and the citizenship of the parties. It adopts the "words of the constitution. The 2d section relates to "the removal of suits from the State Courts into the "United States Circuit Courts, *and it follows the language "of the 1st section. Hence any cause which might have "been commenced in the Circuit Court, either because of "its subject-matter or the citizenship of the parties, may be "removed from the State Court into a Federal one.*"

Clearly the intent and meaning of the learned judge was, that only such actions as the court can take original jurisdiction of, under the first section, can be removed from State to Federal Courts, under the second section of the act of 1875.

II.

IF THE REPLEVIN ACTION WAS REMOVABLE ON THE 6TH DAY OF JULY, 1877, THE SUBSEQUENT APPEARANCE OF THE APPELLEES IN THE STATE COURT, AND THEIR PROSECUTION OF SAID ACTION WAS A WAIVER OF THEIR RIGHT OF REMOVAL.

But assuming that the action of replevin was removable, that the State Court erred in refusing the third motion for

removal, then we contend for a recognition of the principle, that the right of removal is a personal privilege that may be waived by the party at any time during the progress of the action, either before or after the filing of the petition.

In every removable action it is the privilege of the party to elect whether the cause shall be heard in the Federal or State Court, but certainly he has no right to a trial in both, nor can he experiment between the two courts. The record of the State court clearly shows that the appellees by their motion of May 31st, 1878, (more than one year after the commencement of the replevin action,) sought and accepted the jurisdiction of the State Court. Also, by filing their replication in said State Court on the first day of June, 1878, and especially by filing a new and different petition and motion for the removal of the cause from the State to the Federal Court. This was surely a voluntary act of the parties, and they thereby clearly recognized the jurisdiction of the State Court. Will this court hold that these parties had no legal right to recognize the jurisdiction of the State Court, or that they had not then the same right that the law gave them on the 23d day of May, 1877? All the parties on the first day of June, 1878, were before the State Court—the appellees in their petition, bond and motion represented that the cause was then pending in the State Court, and invoked its jurisdiction—they verified their petition by affidavit—they sought the judgment of the State Court, and upon their motion its jurisdiction was exercised and judgment was entered—they went into the trial of the action, and not until after the jury was examined and accepted by them, and sworn in the case, did they even orally or in any manner protest against the power of the court whose jurisdiction they had first sought, and continued to recognize and accept for more than one year after the commencement of their action.

In the State Court, consent gives jurisdiction. Jurisdiction in that court is general; in the Circuit Court, it is limited and special; and therefore here consent cannot give jurisdiction over the subject matter. A party may waive even a constitutional right, and the voluntary appearance of a party in the State Court after the attempted removal of the cause into the United States Court is a submission to that jurisdiction.

We insist that the appearance of the parties in the State Court on the 31st of May, 1878, and the following days, was a clear recognition of the jurisdiction of the State Court, and they are bound by its judgments.

In *Bushnell* v. *Kennedy*, 9 Wall., 395, it is *held* that where a party appears in court by consent, or by his own act, it is a waiver of exceptions to the jurisdiction.

In *Jones* v. *Andrews*, 10 Wall., 327, the same principle is upheld. Here was a question of jurisdiction over the defendant, Andrews, who was a cititizen of the State of New York; the suit was brought in the State of Tennessee; Andrews appeared and objected to the jurisdiction of the court, and the bill was dismissed. The Supreme Court say:

"It is true that as soon as he (Andrews) appeared, he "moved a dismissal of the bill on two grounds. (1.) That "it did not show such facts in regard to citizenship or "residence of the defendants as to give the court jurisdic- "tion. (2.) That it contained no equity. Whether, if "he had made the motion on the first ground alone, he "would have waived his personal exemption, it is not "necessary to decide. *His moving to dismiss the bill for* "*want of equity is a clear waiver*, and he was properly "required to answer the bill. After this the question of "jurisdiction over the person was at an end."

Dillon on Removals, p. 77.

"A party entitled to a removal may estop himself to "apply for it, or having applied, may waive the right to "a removal by his subsequent action in the State Court."

The appellees were the plaintiffs in the replevin action. Their appearance in the State Court was entirely voluntary, and not by compulsion through process or orders of said State Court.

They were not compelled to remain in said State Court nor to prosecute their action, and therefore their position is entirely different from that of a defendant who is constrained to remain in the State Court, and defend the action, even after his petition for removal has been overruled.

The appearance of the appellee in the State Court on the first of June, 1878, one year after the commencement of the cause, was entirely voluntary, and in the regular prosecution of their replevin action.

Their petition filed by them on that day for the removal of the cause from the State to the Federal Court, under the decisions of this Court, was properly overruled.

The terms of the Circuit Court of Cook County are fixed by statute as follows:

"Section First: *Be it enacted by the people of the "State of Illinois, represented in the General Assembly,* "that the terms of the Circuit Court of Cook County "shall commence on the third Monday of every month."

(Underwoods edition of the Statutes of Illinois, page 381.)

This petition of the appellees, together with the appellants objection thereto may be found on pages 33, 34 and 35 of the printed Record. It is apparent that at least ten terms of the State Court had intervened since the commencement of said action, and the filing of the said peti-

tion, at which said action could have been tried, as stated in appellants objections.

For this delay the petition was properly denied, even if the action at a proper time was removable.

Under the earlier removal acts, the defendant alone had the right of removal. If he desired to avail himself of the right, he was required to do so in apt time, and before he had accepted the jurisdictipn of the State Court. The distinction between his voluntary and involuntary appearance was always carefully recognized; but this Court has never relieved a party from the legal results of a voluntary appearance.

Under the act of 1875, the plaintiff has the right of removal, but it is very hard to understand how his appearance in any cause can be other than volutary, or why he should not be estopped from denying the validity of a judgment entered against him, upon his prosecution of an action in the State Court after the refusal of his petition to remove, except in a court of appellate or superior jurisdiction.

III.

THE STATE COURT HAVING ACQUIRED JURISDICTION OF THE PARTIES AND SUBJECT MATTER, ITS JUDGMENTS ARE VALID UNTIL REVERSED BY A COURT OF SUPERIOR OR APPELLATE JURISDICTION.

The record of the State Court (Rec., p. 36) shows that on the 6th day of June, 1878, a judgment was rendered in favor of the appellant, Kern, and for the return of the property replevied, to the sheriff. Had the writ of *retorno* been obeyed by the appellees, the property would have been sold by the sheriff, under the executions held by him, at the time of the levy in May, 1877.

This judgment has never been appealed from nor satisfied; it is still in full force and effect.

The appellees, failing or refusing to return the property in accordance with the judgment of the State Court, and as directed by its writ of *retorno*, the proper remedy of the execution plaintiffs, under the State statutes, was by action upon the replevin bond, which was commenced in the State Court on the 7th day of June, 1878. The bond was joint and several, executed by the complainants, all of whom are and were non-residents, and by Arthur B. Meeker and John B. Drake, residents of the State and said District; all were made defendants.

The appellees filed their bill in the Circuit Court to enjoin the action then pending in the State Court upon the bond. Drake had been served, and the court had acquired jurisdiction. The parties were necessarily different from the parties to the action of replevin—it was an entirely new and different action. The theory of the bill is that the State Court had no jurisdiction over the action of replevin after the 27th of July, 1877, and that its judgment is therefore a nullity; that the action upon the bond is a mere incident to the first suit, and that the Circuit Court, having acquired jurisdiction over the replevin action, has power to enjoin the suit upon the bond. This can be nothing more than an assumption of power, and is not sustained by either law or precedent.

The appellant, Dietzsch, was a necessary party, and Drake and Meeker proper parties to the action. They were not parties in the case of replevin, but were in the action on the bond in the State Court, and subject to its jurisdiction before the bill was filed.

In both cases jurisdiction was first vested in the State Court, and if errors have been there committed, the Circuit is not a proper forum for their review; no judgment

of that court can modify, much less nullify, the judgment of the State Court.

"Having obtained jurisdiction over the person and over "the subject matter, no error in its exercise can make the "judgment void."

Freeman on Judgments, sec. 135.

In *Peck et al.* v. *Jenness et al.*, 7 Howard, 612, it is *held* that "when a court has jurisdiction, it has the right "to decide every question that occurs in the cause, and "whether its decision be correct or otherwise, its judg- "ment, until reversed, is regarded as binding in every "other court—and that the District Court has no supervi- "sory power over the State Court."

Also, in *Riggs* v. *Johnson County*, 6 Wallace, 195, it is held "that State Courts are exempt from all interference "by the Federal tribunals, but they are destitute of all "power to restrain either the process or proceedings in "the National Courts. Circuit Courts and State Courts "act separately and independently of each other, and in "their respective spheres of action the process issued by "the one is as far beyond the reach of the other as if the "line of division between them 'was traced by land-marks "and monuments visible to the eye.' Appellate relations "exist in a class of cases between the State Court and this "Court, but there are no such relations between the State "Courts and the Circuit Courts."

These questions were of frequent occurrence under the removal acts prior to that of 1875. Under those acts the defendant was the moving party, and where his petition was denied, his only remedy under the judiciary act was by appeal to the State Supreme Court, and if its judgment should be adverse, by writ of error to the Supreme Court of the United States. This has always been, and is now, the uniform practice of the Federal Courts.

IV.

The Circuit Courts of the United States have no jurisdiction to enjoin proceedings or actions pending in State Courts.

The answers of the appellants, Dietzsch and Kern, to the bill, deny the jurisdiction of the Circuit Court to enjoin the prosecution of the action then pending in the State Court, and to grant the further relief prayed for in the bill. The bill prays that the defendants, their attorneys, &c., and the execution plaintiffs represented by them, be enjoined from instituting or prosecuting any suit upon the replevin bond, or any action to enforce any liability or right upon said pretended judgment of *retorno* entered in said Circuit Court of Cook County, &c.

The order then directed that a writ should issue enjoining the prosecution of any suit then pending upon the bond, or proceedings then pending in the State Court. The bill recognizes the fact, and impliedly admits that the defendants, their agents and attorneys, merely represent the execution plaintiffs, and that the defendants sought to be enjoined are officers of the State Court, in the regular discharge of their duties as such. That this court had no power to grant the writ of injunction, is a proposition clearly demonstrated by the law itself, and by an unbroken series of judgments of the Supreme Court of the United States.

Section 720 of the Federal Statutes is as follows:

"The writ of injunction shall not be granted by any "Court of the United States to stay proceedings in any "court of a State, except in cases where such injunction "may be authorized by any law relating to proceedings in "bankruptcy."

This question of power in the Federal Courts to enjoin proceedings pending in State Courts was presented to the Supreme Court of the United States, as early as 1807, in the case of

Driggs & Keith v. *Wolcott*, 4 Cranch, 178.

Driggs & Keith had commenced a suit at law against Wolcott, in the County Court of Middlesex, Connecticut, on two promissory notes given by Wolcott and one Richard Matthews, and by him endorsed to appellants—whereupon, Wolcott filed a bill in chancery in the *Superior Court* of the State against the appellants, Driggs & Keith, and also against Robert Young and Richard Matthews, praying that Driggs & Keith might be compelled to give up the two notes to be canceled, or be perpetually enjoined from proceeding at law for the recovery thereof. &c.

The suit in chancery was removed by Driggs & Keith from the State Court into the Circuit Court of the United States, where it was decreed that Driggs & Keith should, on or before a certain day, deliver the notes to the clerk of the court, and in default thereof should forfeit and pay to Wolcott $1,500; and that they should be perpetually enjoined from proceeding at law for the recovery on said notes.

From this decree Driggs & Keith appealed.

The Court being of opinion "that a Circuit Court of the "United States had not jurisdiction to enjoin proceedings "in a State Court," reversed the decree.

Also, in

Peck et al. v. *Jenness et al.*, 7 Howard, 612.

This case was brought up from the Superior Court of the State of New Hampshire by a writ of error issued under the 25th section of the Judiciary Act.

The defendants in error instituted this suit against plaintiffs in error, Peck et al., in the State Court of New Hamp-

shire. The action was served according to the practice of that State, on the tenth of October, 1842, by the attachment of the goods and chattels of the defendants. At the April term, 1844, Aaron P. Howland, assignee in bankruptcy of each of the defendants, was on motion admitted by the court to move in, and defend in their names. He pleaded severally their application in the District Court of the United States, on the 26th November, 1842, for the benefit of the bankrupt law; on which they were decreed bankrupts on the 28th day of December, 1842. To these pleas, the plaintiffs below replied that before the filing of said petitions the defendants had sued out and prosecuted their writs of attachment, and the custody and possession of the sheriff under such writs. The judgment of the State Court was in favor of the plaintiffs, and writ of error prosecuted by the defendants. Held:

"It is a doctrine of law too long established to require "a citation of authorities, that where a court has jurisdic- "tion, it has a right to decide every question which occurs "in the cause; and whether its decision be correct or "otherwise, its judgment, until reversed, is regarded as bind- "ing in every other court; and that when the jurisdiction "of a court, and the right of a plaintiff to prosecute his "suit in it has once attached, that right cannot be arrested "or taken away by proceedings in another court. These "rules have their foundation, not merely in comity, but "in necessity; for if one may enjoin, the other may retort "by injunction, and thus the parties be without remedy, "being liable to a process for contempt in one if they dare "to proceed in the other. Neither can one take property "from the custody of the other by replevin, or any other "process, for this would produce a conflict extremely em- "barrassing to the administration of justice. It follows, "therefore, that the District Court had no supervisory "power over the State Court, either by injunction, or the

" more summary method pursued in this case, unless it has " been conferred by the bankrupt act. But we cannot " discover any provision in that act which limits the juris- " diction of the State Courts, or confers any power on the " Bankrupt Court to supersede its jurisdiction to annul, or " anticipate their judgments, or wrest property from the " custody of their officers.

" The plea cannot, therefore, be sustained, and the judg- " ment of the Superior Court of New Hampshire must be " affirmed."

Also in *Freeman* v. *Howe*, 27 Howard, 453.

This was a writ of error to the Supreme Court of Massachusetts.

In this case White, a citizen of the State of New Hampshire, instituted a suit in the United States Circuit Court, District of Massachusetts, against a railway corporation of that State, by attachment and summons.

Freeman, the marshal, attached several cars as the property of the company.

Howe *et al.* sued out of the State Court a writ of replevin, and the sheriff, under the writ, took the cars out of the possession of the marshal. Freeman, by way of answer in the replevin suit, set up the authority by which he held the property under the process of the United States Court, which was overruled by the State Court, and judgment rendered for the plaintiff. The case was taken to the Supreme Court of the United States by writ of error.

Held: " That according to the course of decision in the " case of conflicting authorities under State and Federal " process, and in order to avoid unseemly collision between " them, the question as to which authority should for " the time prevail, did not depend upon the rights of the

" respective parties to the property seized, whether the " one was paramount to the other, but upon the question, " which jurisdiction first attached by the seizure and " custody of the property under its process. Upon the " whole, after the fullest consideration of the case, and " utmost respect for the learning and ability of the court " below, we are constrained to differ from it, and reverse " the judgment."

Haines et al. v. *Carpenter et al.*, 91 United States, 254.

In this case the plaintiff in error had filed a bill against Carpenter *et al.* in the Circuit Court of the United States for the District of Louisiana, praying for an injunction restraining the further prosecution of certain actions then pending in the State Court. The bill was dismissed by the court below on demurrer, and from that decree this appeal was taken.

Held: " A mere statement of the bill is sufficient to " show that it cannot be sustained. Whilst it undoubtedly " presents some matters of equitable consideration, they " are so mixed up with others of a different character, or " which cannot be entertained by the Circuit Court of the " United States, and which constitute the main object and " purpose of the suit as to make the bill essentially bad " on demurrer. In the first place the great object of the " suit is to enjoin and stop litigation in the State Courts, " and to bring all the litigated questions before the Cir- " cuit Court. This is one of the things which the Federal " Courts are expressly prohibited from doing. By the " act of March 12, 1793, it was declared that a writ of " injunction shall not be granted to stay proceedings in the " State Court. This prohibition is repeated in section " 720 of the Revised Statutes, and extends to all cases " except where otherwise provided by the Bankrupt Law."

In *Dial* v. *Reynolds*, 96 U. S., 340, the original bill was filed by Lyford as trustee. Reynolds demurred. Lyford resigned, and Dial was appointed in his stead, filed an additional and supplemental bill, to which Reynolds also demurred. The case was brought to this court for final determination. It was decided against him. He thereafter commenced another action of ejectment in the proper State Court, which was still pending. The bill seeks among other things, to enjoin Reynolds from further prosecuting his pending action of ejectment.

Held. "The *gravamen* of what is desired as to Reynolds, is an injunction to prevent his proceeding at law "in the State Court. Without this, all else is of no ac- "account; any other remedy would be unavailing. Such "an injunction, except under the bankrupt act, no court "of the United States can grant. With this exception, it "is expressly prohibited by law."

We challenge the production of a single case or authority in support of the order of injunction entered in the case at bar. In doing so, we do not forget that it is claimed that the case of *French* v. *Hay*, 22 Wal., 231–252, fully justifies the exercise of this extraordinary power, but we respectfully submit that an analysis of the case clearly shows that as an authority in support of the bill, it can have no possible weight.

In February, 1868, French, as trustee, filed a bill in a State Court of Maryland against Hay, Stewart, *et al.*, praying that a certain sale made by Hay to Stewart be set aside, and that Stewart account for rents and profits. A decree was entered against Stewert in June, 1869, ordering him to pay the amount of rents and profits found due by the decree.

In December, 1869, the State Court directed a certain issue to be tried as to furniture, &c., &c. The case was

then removed to the Circuit Court of the United States; and that court, on the 22d day of October, 1872, set aside all the decrees of the State Court, and ordered that the case do now stand for trial. On appeal, the Supreme Court *held:*

"That the Circuit Court of the United States possessed "the same power in the case as the State Court while the "case was before it—no more, and no less. It certainly "did not sit as a court of errors or appeal, with jurisdiction "to reverse the final decree of the State Court made "under the original bill. That would be contrary to the "intent and meaning of the act of Congress, under which "the removal was made."

An interlocutory decree was also entered by the State Court against Hay, and a motion made in that court to vacate the decree. After the removal of the case the motion was renewed in the Circuit Court, and sustained, the court holding that the State Court had the power to vacate the decree, and the Circuit Court only exercised the power vested in the State Court by the laws of Maryland. While the case was still pending in the Circuit Court, and undetermined, French brought an action in a State Court of Pennsylvania upon the interlocutory decree that had been vacated.

Hay filed a petition or bill in the main case to restrain the collection of the vacated decree. The court held (page 252), that the bill was not original, that it was auxiliary and dependent in its character, as much so as a bill in review. That the court had jurisdiction of the case and all the parties, and consequently the power to enjoin.

This is not the case at bar. This court had not jurisdiction of the plaintiff, Dietzsch, or of the execution plaintiffs, nor of the defendants Drake and Meeker. The action upon the bond brought by Dietzsch in the interest of the

execution plaintiffs is one entirely different, separate and independent of the action brought by the complainants for the possession of the iron. The parties, the subject-matter and the issues are entirely different.

This question is further illustrated in *Dunn et al.* v. *Clarke et al.*, 8 Peters, 1. This case was submitted to the court as a question whether the court had jurisdiction. Graham, a citizen of Virginia, had recovered a judgment in an action of ejectment in the Circuit Court for the District of Ohio. Dunn held the lands in trust under the will of Graham. The complainants in the court below filed their bill praying for an injunction to the judgment against them, and to obtain a decree for the conveyance of the land in controversy. The parties to the bill and in the action at law were different: the court held that "an in-"junction bill between the same parties as in the action at "law would not be considered an original bill, but if other "parties are made in the bill, and different interests in-"volved, it must be considered, to that extent at least, an "original bill."

In addition to the authorities above cited, which we believe this court will cheerfully recognize as controlling, we also refer your Honors, to a few other cases of perhaps lesser authority.

In *Schell* v. *Erie R. R.*, 51 Bar., 368, and in *Smith* v. *Am. Life Ins Co.*, Clarke, 307, it is *held* that "ordinarily "it is improper to restrain by injunction proceedings pend-"ing in another court, having power to grant the relief "sought in the action, in which the injunction is asked."

Certainly it will not be claimed that the State Court had not the power to grant the appellees all the relief they were entitled to under the law. They have not in the State Court been denied any defense they had, or chose to make, to either action.

Again: "A court of chancery has no jurisdiction over "the question of irregularity in a judgment at law."

Suydam v. *Beals*, 4 McLean, 12.

Reynolds v. *Harine*, 13 B. Monroe, 234.

The appellees have heretofore claimed in support of their bill, that the State Court had no jurisdiction to render a judgment of any character in the replevin action, but we understand the rule to be that courts of equity will not grant an injunction to stay proceedings at law, merely on account of a defect of jurisdiction of the court where the proceedings are pending.

In *Ewing* v. *City of St. Louis*, 5 Wallace, 413, the Circuit Court of the United States, for Missouri, under bill in equity, was asked to enjoin the enforcement of certain judgments rendered against the complainant by the Mayor's Court in the City of St. Louis, on the ground that the mayor had no power by any act of the Legislature, or by any clause of the city charter, to render such judgments. The prayer was refused on the ground that a court of equity had no jurisdiction of the matter, and that the complainant had a plain, adequate and complete remedy at law.

We find the same rule in *Story's Equity Jurisprudence*, § 898:

"Courts of equity will not grant an injunction to stay "proceedings at law, merely on account of any defect of "jurisdiction of the court where such proceedings are "pending."

Also, in § 1575:

"It seems to be conclusively settled, that a judgment "can only be impeached in a court of equity for fraud in "its concoction. It is said there is no case in which "equity has ever undertaken to question a judgment for "irregularity."

In *Walker et al.* v. *Robbins et al.*, 14 Howard, 584, it is held that courts of equity have no jurisdiction to regulate proceedings, and to afford relief at law where there has been abuse in the various details arising on execution of process, mesne or final.

"If a court of chancery can be called on to correct one "abuse, so it may be to correct another, and in effect to "vacate judgments, where the tribunal rendering the "same would refuse relief. This court has never departed "from the foregoing rule, nor allowed the Circuit Courts "to depart from it, in cases brought here, nor can we "do so."

V.

IT WAS ERROR TO ENJOIN THE PROSECUTION OF THE ACTION AGAINST DRAKE, WHO IS NOT A PARTY TO THE BILL. THERE IS A FATAL DEFECT OF PARTIES COMPLAINANT IN THE BILL.

We have already shown that in the action pending in the State Court the prosecution of which this bill seeks to enjoin, all of the appellees, together with Arthur B. Meeker and John B. Drake, were defendants. The necessary parties complainant, therefore, in a bill to enjoin such prose, cution, are all of the defendants in the action at law; and if a part of the defendants only come into a court of equity for relief, such complainants can alone receive the protection of the court, and the plaintiffs in the action at law may proceed against the defendants in such action, who are not made parties to the bill.

In *Broughton* v. *Allen*, 11 Paige, 32, it is *held* that all persons having a joint interest in the action set up in the bill must be made parties thereto. For this reason the bill was dismissed with costs.

In *Macy* v. *Brooks*, 4 Bibb, 238, the bill filed by one of

two obligors, the other not made a party. *Held*, "that the "decree on that ground was clearly erroneous. If one of "two co-obligors may file a bill, the other may, and suits "be thus multiplied contrary to the principles that govern "courts of equity."

In *Armistead* v. *Durham*, 11 Beaver, *held*, "that on a "bill filed by one on behalf of others, an injunction which "restrains proceedings against one not a party to the "record, is irregular."

In *Chapin* v. *Cooper*, 1 Vesey and Beames, 19, the chancellor says: "There is no instance where upon the "notion that if one obligor pays upon compulsion his co-"obligor would have to indemnify him, it was ever held "that if one co-obligor comes here alone for an injunction "without making the other a co-plaintiff or co-defendant "a proceeding at law against the obligor, not a party to the "bill, would be a breach of the injunction."

In *Iveson* v. *Harris*, 7 Vesey, 257, by Lord ELDON:

I find that the court has held very firmly to the doctrine that you cannot have an injunction, except against a party to the suit.

In *Fellows* v. *Fellows*, 4 Johns, Chy., 25, by the VICE-CHANCELLOR: I think the practice of granting an injunction against a creditor who is not a party to the bill is wrong.

In Joyce on the Law of Injunctions, page 1,327, we find the following rules: "Persons not named in the order or "writ of injunction are not liable to be committed for the "breach of the injunction." Also,

"An injunction only protects the plaintiffs named in the "record, but if those named in the record can procure "other parties equally interested with themselves to sub-"mit to the same terms as the plaintiffs in the record sub-

" mit to, the court will, on special interlocutory application, " give them the same relief or protection as it gives the " plaintiffs on the record."

We find the same rule in

Hilliard on Injunctions, page 175.

" In a suit by parties in a joint stock banking company " for themselves and other share-holders, to restrain a " creditor of the company from suing the share-holders for " a debt alleged to have been inequitably contracted, the " common injunction restrained the defendants from pro- " ceeding at law, touching the matter in question. *Held* " the injunction applied only to the plaintiffs in the record, " and was not violated by a proceeding on the part of the " defendants against other share-holders not individually " named."

Kerr's Injuntions, page 643.

Where an injunction to restrain proceedings at law has been obtained by an obligor in a joint and several bond upon a bill, to which the co-obligor was not a party, a proceeding at law against the co-obligor is not a breach of the injunction.

The court below held that the State court was divested of jurisdiction by the petition for removal and the filing of the transcript of record in the office of the clerk of the Circuit Court, and that the judgment of the State court in the replevin action of June 6, 1878, is a nullity.

It was for this reason that the Circuit Court enjoined the collection of such judgment, and the prosecution of the action upon the bond. If the judgment in the replevin action is a nullity, there can be no recovery against Drake in the pending action upon the bond, and if the theory of appellee's counsel is correct, then Drake had a complete remedy at law, and chancery has no jurisdiction. We especially complain that the Circuit Court should attempt

to exercise appellate or supervisory jurisdiction over the judgments of the State courts, instead of remitting the appellees to their only legal remedy—of appeal or writ of error from the judgment of the lower court to a court of appellate jurisdiction. Against the judgment and decree of the Circuit Court against the appellants, they have asked for no injunction, but have brought the record to this court for review; while the appellees, instead of seeking proper relief from the judgment of the State Court, have applied to a court having either none, or, at most, but concurrent jurisdiction, for injunction restraining the collection of such judgment.

The judgment of the State Court in favor of Kern, is still in full force and unsatisfied, the action upon the bond still pending, and the court is still exercising jurisdiction over the parties and subject matter. The judgment and record of the State Court in the replevin action is not before this court for review, nor is the question of removal a controlling question in the present case; but on the contrary, the more important question, whether this court will now, for the first time in its history, sustain the exercise of jurisdiction by the Circuit Court over the proceedings of State courts, and the stay of such proceedings by injunction Against this exercise of this power, the State courts enter their earnest protest—a judicial power not only unauthorized, but directly prohibited by law.

The State courts accept without dispute assent the rule in *Riggs* v. *Johnson County*, and insist that it be also enforced against the Circuit courts.

"That Circuit courts and State courts act separately "and independently of each other, and in their respective "spheres of action, the process issued by the one is as far "beyond the reach of the other as if the line of division "between them was traced by 'land marks visible to the "naked eye.'"

The appellants, in conclusion, respectfully submit the following propositions:

First. The petition to remove the replevin cause from the State Court was submitted to the State Court, and decided against the petitioners. That court was competent to pass upon the question, and its decision cannot ~~here~~ be reviewed by the Circuit Court. The denial of the petition left the case in the State Court, even though the court may have erred in its denial. The petitioners could save the question by exception, and their remedy by appeal or writ of error was perfect through the State Courts, and thence to this Court.

Second. The subsequent action of the appellees in the replevin suit was a waiver of their right to remove the case, if such right of removal existed. And also of the removal of it, if such removal had been accomplised. In the State Court, consent gives jurisdiction. The jurisdiction of that court is general. In Circuit Courts it is limited and special, and therefore here, consent cannot give jurisdiction. A party may waive even a constitutional right, and the appearance of the appellees in the State Court after the attempted removal of the cause into the United States Court, was a submission to that jurisdiction.

Third. The special conditions precluded the commencement of the replevin suit in the United States Court. These conditions were, that the property sought to be replevied was in the control and possession of the State Court, through its officer, the sheriff, and with that possession the United States Court could not interfere. When the property was replevied it, or its representative, the bond, was still in the possession of the State Court, subject to its custody and control; that custody and control Circuit Courts had no power to interfere with, hence it is submitted that the case was one of which the Circuit Court could not take jurisdiction, either by removal or otherwise.

Fourth. The jurisdiction and power of the Circuit Court is, at most, only the equivalent of that of the State Court. It is in no sense appellate or advisory; as between such courts there can be no injunctional authority over each other.

Fifth. Even if the State Court erred in overruling the petitions for removal, the Circuit Court, as a court of chancery, cannot correct the errors of the State Court, nor is it the province of a court of chancery to correct errors in legal proceedings.

Sixth. A judgment against two will not be enjoined upon a bill filed by one of them, to which the other is not a party. Injunctions only operate in favor of or against parties before the court. Proceedings, therefore, against a person not made a party to the bill, are not a breach of an injunction.

Seventh. United States Courts are prohibited by statute from enjoining proceedings in the State courts, and the current of authority is unbroken from the beginning of the Government down to the present time, both in the United States and in the State Courts, denying the jurisdictional right of either of these courts to interfere with the jurisdiction of, and proceedings in the other.

Respectfully submitted.

E. WALKER,
Att'y for Appellants.

CHICAGO, NOV. 17, '80.